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HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

Government
Publications

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

BILL 351

An Act respecting Canadian National Railways

THURSDAY, JUNE 2, 1955

FRIDAY, JUNE 3, 1955

WITNESSES:

Mr. N. J. MacMillan, Q. C., of Montreal, Vice-President and General Counsel, Canadian National Railways; Mr. E. A. Driedger, Q.C., Assistant Deputy Minister of Justice; Mr. H. E. B. Coyne, Q.C., of Ottawa, Counsel, Canadian Trucking Associations; Mr. George C. Thompson of Halifax, President, Canadian Motor Coach Association.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955

58930—1

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.,

and

Messrs.

Barnett
Batten
Bonnier
Boucher *(Chateauguay-Huntingdon-Laprairie)*
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
Decore
Deschatelets
Dupuis
Ellis
Follwell
Fulton
Gagnon
Gauthier *(Lac-Saint-Jean)*
Goode
Gourd *(Chapleau)*
Green
Habel
Hahn
Hamilton *(Notre-Dame-de-Grace)*
Hamilton *(York-West)*
Harrison
Healy
Herridge
Holowach
Hosking
Howe *(Wellington-Huron)*
James
Johnston *(Bow River)*
Kickham
Lafontaine
Langlois *(Gaspe)*
Lavigne
Leboe
McIvor
Meunier
Montgomery
Murphy *(Lambton West)*
Murphy *(Westmorland)*
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

Eric H. Jones,
Clerk of the Committee.

Note: The name of Mr. Balcom was substituted for that of Mr. James, the name of Mr. MacNaught for that of Mr. Carrick, the name of Mr. McWilliam for that of Mr. Cavers and the name of Mr. Hanna for that of Mr. Decore after the morning sitting on Friday, June 3, 1955.

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ORDERS OF REFERENCE

HOUSE OF COMMONS,
TUESDAY, May 24, 1955.

Ordered,—That the following Bill be referred to the said Committee:
Bill No. 351, An Act respecting Canadian National Railways.

FRIDAY, June 3, 1955.

Ordered,—That the name of Mr. Balcom be substituted for that of Mr. James; and

That the name of Mr. MacNaught be substituted for that of Mr. Carrick; and

That the name of Mr. McWilliam be substituted for that of Mr. Cavers; and

That the name of Mr. Hanna be substituted for that of Mr. Decore on the said Committee.

Attest.

Leon J. Raymond,
Clerk of the House.

58930—1½

REPORT TO THE HOUSE

MONDAY, June 6, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

THIRTEENTH REPORT

Your Committee has considered Bill No. 351, An Act respecting Canadian National Railways, and has agreed to report it with amendments, namely:

Clause 16

Page 6, line 11, delete the figures "197" and substitute therefor "202".

Clause 18

Delete Clause 18 and substitute therefore the following:

18. (1) The railway or other transportation works in Canada of the National Company and of every company mentioned or referred to in Part I or Part II of the First Schedule and of every company formed by any consolidation or amalgamation of any two or more of such companies are hereby declared to be works for the general advantage of Canada.

(2) The companies incorporated by subsection (2) of section 7 of the Canadian National-Canadian Pacific Act are hereby continued and such companies are in respect of all their affairs subject to this Act.

(3) For the purposes of this section, the expression "railway or other transportation works" does not include any works operated under the authority of section 27.

Clause 21

Delete Clause 21 and substitute therefor the following:

21. The Board of Directors shall so direct, provide and procure that all freight destined for export by sea that is consigned within Canada for carriage to National Railways either at point of origin or between that and the sea shall, unless it has been by its shippers specifically routed otherwise, be exported through Canadian seaports.

Clause 27

Delete Clause 27 and substitute therefor the following:

27. The National Company and every other railway company comprised in National Railways, may, in conjunction with or substitution for the rail services under their management or control, buy, sell, lease or operate motor vehicles of all kinds for the carriage of traffic.

Clause 31

Delete Clause 31 and substitute therefor the following:

31. The National Company may, with the approval of the Governor in Council, acquire, hold, guarantee, pledge and dispose of shares in the capital stocks, bonds, notes, securities or other contractual obligations whatsoever of any railway company, or of any transportation, navigation, terminal, telecommunication, express, hotel, electric or power company or of any other company authorized to carry on any business incidental to the working of a railway, or any business which in the opinion of the Board of Directors may be carried on in the interests of the National Company."

A copy of the evidence adduced in respect of the said bill is appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, June 2, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. this day. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Batten, Bonnier, Campbell, Carrick, Carter, Cavers, Deschatelets, Fulton, Gauthier (*Lac-Saint-Jean*), Goode, Green, Habel, Hahn, Hamilton (*York West*), Harrison, Herridge, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Meunier, Montgomery, Murphy (*Westmorland*), Nesbitt, Nicholson, Nickle, Nowlan, Ross and Villeneuve.

In attendance:

Of the Department of Transport: The Honourable George C. Marler; Mr. F. T. Collins, Comptroller and Secretary; and Mr. Jacques Fortier, Counsel: *Of the Department of Justice*—Mr. E. A. Driedger, Q.C., Assistant Deputy Minister: *Of the Canadian National Railways*— Mr. N. J. MacMillan, Q.C., Vice-President and General Counsel; Mr. Lionel Cote, Q.C., Assistant General Solicitor; Mr. P. Taschereau, Q.C., Solicitor; and Mr. J. W. G. Macdougall, Commission Counsel, all of Montreal, P.Q.: *Of Canadian Trucking Associations*—Mr. William C. Norris of Montreal, President; Mr. John Magee of Ottawa, Executive Secretary; and M. H. E. B. Coyne, Q.C., of Ottawa, Counsel: *Of the Canadian Motor Coach Association*—Mr. George C. Thompson of Halifax, President; Mr. Roch Tremblay, Q.C., of Montreal, Vice-President, (also President, Quebec Motor Coach Owners' Association); Mr. A. H. Foster of Montreal, Secretary Manager; and Mr. C. H. Belford, Ottawa, Representative: *Of Quebec Motor Coach Owners' Association*—Mr. N. A. Fournier of Quebec, P.Q., Vice-President; and Mr. Wilbrod Bherer, Q.C., of Quebec, P.Q., Counsel; and *Of Chambre de Commerce of the Province of Quebec*—Mr. Joseph Racine of Boischatel, P.Q., Representative.

The Committee proceeded to consider Bill No. 351, An Act respecting Canadian National Railways.

On motion of Mr. Langlois (*Gaspe*),

Resolved,—That the Committee print 1000 copies in English and 250 copies in French of its Minutes of Proceedings and Evidence in respect of Bill No. 351.

Mr. MacMillan was called; he outlined the historical background and the financial structure and general operations of Canadian National Railways and its predecessors; he also explained the purpose of the bill and was questioned.

On clause by clause consideration of the bill, clauses 1 to 7 inclusive were severally adopted, Mr. MacMillan answering questions thereon.

At 1.00 o'clock p.m., the Committee adjourned until 3.30 o'clock p.m. this day.

AFTERNOON SITTING

At 3.30 o'clock p.m. the Committee resumed its consideration of Bill No. 351, the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Bonnier, Buchanan, Campbell, Carrick, Cavers, Deschatelets, Fulton, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green,

Hamilton (*York West*), Harrison, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Meunier, Montgomery, Nesbitt, Nicholson, Nowlan, Ross, Small and Villeneuve.

In attendance: The same as at the morning sitting.

Mr. MacMillan answered questions during the clause by clause consideration of the bill.

Clauses 8 to 15 inclusive were severally adopted.

On Clause 16:

On motion of Mr. Langlois (*Gaspe*),

Resolved,—That clause 16, paragraph (a) be amended by deleting the figures "197" in line 11 of page 6 and substituting therefor the figures "202".

Clause 16 as amended was adopted.

Clause 17 was adopted.

The Committee agreed next to consider clause 18, and then clause 27, and thereafter the intervening clauses.

On Clause 18:

It was moved by Mr. Langlois (*Gaspe*), seconded by Mr. Cavers,

That clause 18 be amended by adding thereto the following subclause:

(4) For the purposes of this section, the expression "works" and "railway and other transportation works" do not include

(a) any works operated under the authority of section 27, and

(b) the works of any company mentioned in Part III of the First Schedule.

On Clause 27:

It was moved by Mr. Langlois (*Gaspe*), seconded by Mr. Cavers,

That clause 27 be deleted and that there be substituted therefor the following:

27. The National Company and every other railway company comprised in National Railways, may, in conjunction with or substitution for the rail services under their management or control, buy, sell, lease or operate motor vehicles of all kinds for the carriage of traffic.

Honourable Mr. Marler explained the purposes of the proposed amendments and answered questions thereon. Debate ensued.

Mr. Coyne made a statement on the proposed amendments to clauses 18 and 27 and was questioned.

At 5.30 o'clock p.m., the Committee adjourned until 8.00 o'clock p.m. this day.

EVENING SITTING

At 8.00 o'clock p.m., the Committee resumed its consideration of Bill No. 351, the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Bonnier, Carrick, Carter, Cavers, Deschatelets, Fulton, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Hamilton (*York West*), Herridge, Howe (*Wellington-Huron*), James, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Nesbitt, Nowlan, Purdy, Ross, Small and Villeneuve.

In attendance: The same as at the afternoon sitting.

On Clauses 18 *and* 27

The questioning of Mr. Coyne was continued.

Mr. Thompson was called; he made a statement on the proposed amendments to clauses 18 and 27, was questioned thereon and was retired.

After debate it was agreed that further consideration of clauses 18 and 27 be deferred.

The Committee reverted to clause 19. Clauses 19 and 20 were adopted.

Following debate it was agreed that clause 21 stand.

Clause 22 was carried on division: Yeas, 10: Nays, 2.

At 10.07 o'clock p.m., the Committee adjourned until 10.30 o'clock a.m. on Friday, June 3, 1955.

FRIDAY, June 3, 1955.

The Standing Committee on Railways, Canals and Telegraph Lines met at 10.30 o'clock a.m. this day. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Batten, Bonnier, Byrne, Campbell, Carter, Deschatelets, Fulton, Gauthier (*Lac-Saint-Jean*), Gourd (*Chapleau*), Green, Harrison, Herridge, Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, McCulloch (*Pictou*), Montgomery, Nicholson, Nowlan, Ross and Villeneuve.

In attendance: The same as at the evening sitting on Thursday, June 2, except Mr. Joseph Racine.

The Committee resumed its clause by clause consideration of Bill No. 351.

It was agreed that clause 23 stand.

Clauses 24, 25, 26, 28 and 29 were severally adopted.

The Committee reverted to clauss 18 and 27 which previously were allowed to stand.

By leave, Mr. Langlois (*Gaspe*) withdrew his motion to amend clause 18, moved by him at the afternoon sitting on Thursday, June 2.

On motion of Mr. Langlois, it was

Resolved,—That clause 18 be amended by deleting that clause and substituting therefor the following:

18. (1) The railway or other transportation works in Canada of the National Company and of every company mentioned or referred to in Part I or Part II of the First Schedule and of every company formed by any consolidation or amalgamation of any two or more of such companies are hereby declared to be works for the general advantage of Canada.

(2) The companies incorporated by subsection (2) of section 7 of the Canadian National-Canadian Pacific Act are hereby continued and such companies are in respect of all their affairs subject to this Act.

(3) For the purposes of this section, the expression "railway or other transportation works" does not include any works operated under the authority of section 27.

Mr. Driedger was called; he explained the legal aspects of the proposed amendments to clauses 18 and 27, was questioned threon and retired.

Following debate, the amendment proposed by Mr. Langlois (*Gaspe*) this day to clause 18 was carried. Clause 18 was adopted as amended.

The amendment proposed by Mr. Langlois (*Gaspe*) at the afternoon sitting on Thursday, June 2, to clause 27 was carried. Clause 27 was adopted as amended.

The Committee reverted to clause 21. On motion of Mr. Nowlan,

Resolved,—That clause 21 be amended by deleting that clause and substituting therefor the following:

> 21. The Board of Directors shall so direct, provide and procure that all freight destined for export by sea that is consigned within Canada for carriage to National Railways either at point of origin or between that and the sea shall, unless it has been by its shippers specifically routed otherwise, be exported through Canadian seaports.

Clause 21 as amended was adopted.

Clause 30 was adopted.

At 1.03 o'clock p.m., the Committee adjourned until 3.30 o'clock p.m. this day.

AFTERNOON SITTING

At 3.30 o'clock p.m., the Committee resumed its consideration of Bill No. 351, the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Balcom, Bonnier, Byrne, Carter, Deschatelets, Gourd (*Chapleau*), Green, Hanna, Harrison, Herridge, Howe (*Wellington-Huron*), Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, Leboe, MacNaught, McCulloch (*Pictou*), McIvor, McWilliam, Montgomery and Purdy.

In attendance:. Of the Department of Transport—The Honourable George C. Marler; Mr. F. T. Collins, Comptroller and Secretary; and Mr. Jacques Fortier, Counsel: *Of the Canadian National Railways*— Mr. N. J. MacMillan, Q.C., Vice-President and Counsel; Mr. Lionel Cote, Q.C., Assistant General Solicitor; Mr. P. Taschereau, Q.C., Solicitor; Mr. J. W. G. Macdougall, Commission Counsel; all of Montreal, P. Q.

On Clause 31

On motion of Mr. Langlois (*Gaspe*),

Resolved,—That clause 31 be amended by deleting that clause and substituting therefor the following:

> 31. The National Company may, with the approval of the Governor in Council, acquire, hold, guarantee, pledge and dispose of shares in the capital stocks, bonds, notes, securities or other contractual obligations whatsoever of any railway company, or of any transportation, navigation, terminal, telecommunication, express, hotel, electric or power company or of any other company authorized to carry on any business incidental to the working of a railway, or any business which in the opinion of the Board of Directors may be carried on in the interests of the National Company.

Clause 31 as amended was adopted.

Clauses 32 to 47 inclusive and the First and Second Schedules were severally adopted, Mr. MacMillan answering questions thereon.

The Committee reverted to clause 23 and adopted it.

Mr. MacMillan answered questions of which notice had been given during the sittings on June 2 and earlier this day. He tabled a copy of Order in Council P.C. 115 dated January 20, 1923, regarding the entrusting of the Canadian Government Railways to the Canadian National Railways for operation and management.

On motion of Mr. Langlois (*Gaspe*),

Ordered,—That the said Order in Council P.C. 115 be printed in this day's Minutes of Proceedings and Evidence.

It was agreed that certain information regarding the measures taken by the railways to further the use of Canadian ports, which Mr. MacMillan was unable to provide immediately, be sent to the Clerk of the Committee on Mr. MacMillan's return to Montreal and that it be printed as an appendix to this day's minutes of Proceedings and Evidence.

The preamble and the title were adopted.

The bill was carried as amended.

Ordered,—That the Chairman report Bill No. 351 to the House, as amended.

At 4.40 o'clock p.m., the Committee adjourned to the call of the Chair.

Eric H. Jones,
Clerk of the Committee.

EVIDENCE

THURSDAY, June 2, 1955.
10.30 A.M.

The CHAIRMAN: Gentlemen, we have a quorum. We have before Bill 351, an Act respecting the Canadian National Railways.

I would first like to have on record the committee's decision as to the number of copies to be printed in English and French. May I have a motion on that?

Mr. LANGLOIS *(Gaspé)*: Mr. Chairman, I move, seconded by Mr. Gauthier (Lac-St-Jean), that the committee print 1,000 copies in English and 250 copies in French of the minutes of its proceedings and evidence in respect to Bill 351.

The CHAIRMAN: Is that agreeable?

Agreed.

We have with us today Mr. N. J. MacMillan, Q.C., vice-president and general counsel of the Canadian National Railways.

Mr. JOHNSTON *(Bow River)*: Before you call on the witness, Mr. Chairman, may I ask if any of the provinces have asked to make a presentation before this committee and if so, when will they be heard?

The CHAIRMAN: Some of the trucking associations have but none of the provinces.

Hon. GEORGE C. MARLER *(Minister of Transport)*: I might say as far as I am concerned, no such representation has been made to me either.

Mr. NOWLAN: When is it proposed to hear these representations?

Hon. Mr. MARLER: I was going to ask Mr. MacMillan to give us an outline of the bill. I thought if he were to give us a general outline of the provisions of the bill and a little of the background, then we might possibly afterward deal with the bill clause by clause, and when we reach the articles on which representations are to be made, they could be made when the item is called.

Mr. JOHNSTON *(Bow River)*: There is one point on that. We know by experience sometimes we come to a clause in the bill and it takes a good deal of time before we pass that because of arguments among committee members themselves, and those who wish to make representations may be sitting here for two or three days until their clause comes up. Would it not be better to hear their representations immediately after we hear Mr. MacMillan?

Hon. Mr. MARLER: My thought is that very few of the articles are likely to be contentious. So much of it is consolidation and so little is new that I think it would probably be reasonable to proceed with the explanation first and then to call each item. If we find we are taking a long time, then the committee might reconsider the suggestion I have made.

Mr. N. J. MacMillan, Q.C., Vice President and General Counsel, Canadian National Railways, called:

The WITNESS: Mr. Chairman and gentlemen, in explanation of this bill I would like to remind you of some of the corporate history of the Canadian National Railways. The story really begins in 1852 at which time the Grand Trunk Railway Company of Canada was incorporated. It was franchised to construct a line of railway between Toronto and Montreal and limited geographically to those two points. As time passed, this railway grew enlarged

and expanded. It grew by amalgamation and by statutory extensions, by the acquisition of majority or complete control of other railways, and finally by the leasing under perpetual agreements, or 99 year leases, of the rail facilities of another group of railway companies.

In order to give you some indication of the ramifications of the growth I would like to remind you that as of 1916, which was probably the last date of the vigorous health of the Grand Trunk, it had passed through 25 amalgamations the consequence of each being a re-incorporation. It had been the subject of 15 statutes of the province of Canada prior to Confederation, and subsequent to Confederation, 56 further statutes. These 71 statutes all extended powers, authorized the issuance of bonds, or in some other way extended the corporate structure of the railway.

At the time immediately preceeding amalgamation it owned outright 23 active and operating railways. It possessed the assets of eight other railways—perpetual or long term leases—and it owned the majority of stockholdings of 36 additional companies. All of these companies were operated as the Grand Trunk System. Almost all of these companies issued their own securities, the investments, the assets of the various components being intermixed and hypothecated to secure the issuance of bonds. One of the subsidiaries of the Grand Trunk was an empire onto itself, the Grand Trunk Pacific Railway Company. It was divided into two sections; one of which was the eastern section which was authorized to lay the trans-continental railway then under construction by the Dominion government running from Quebec City to the city of Winnipeg. It was given corporate powers to build its own line of railway from Winnipeg west to the Pacific Ocean and the route was to Prince Rupert. This company was operated as a separate corporate entity to enjoy its own existence. It incorporated its own hotel company, its own steamship company, land companies, a total of 13 miscellaneous companies.

Likewise the Grand Trunk Pacific issued its own bonds, securing the issuance of the bonds by the assets of these subsidiary companies.

I should have said before that the Grand Trunk issued perpetual securities. So much for the Grand Trunk.

The Canadian Northern Railway Company at its birth gave early warning of what was likely to be the rule in that corporation. It came into existence as the result of an amalgamation which took place in 1898. By the time of the outbreak of the first war, the Canadian Northern Railway Company had gone through 14 amalgamations with 14 re-incorporations as a result. It had acquired 29 subsidiary companies. During the first twenty years of its life it came to the parliament of Canada 47 times for extension of charter and revisions.

Now we come to the Canadian National Railway Company. The Canadian National Railway Company was incorporated on June 6, 1919, for the first time. It existed in that form for three years. No directors of the company were appointed until October 4, 1922, so that it was a company existing without a railway and it had not one mile of railway to operate during that entire period. Its first operation began on January 20, 1923, when the Canadian National Railway Company began to operate the Canadian government railways under entrusting order in council. The stock of the Canadian Northern Railway Company was acquired by the federal Crown in 1917 but until 1937 the Canadian Northern Railway Company enjoyed its full independent existence and the directors of that company were the gentlemen who from time to time were the directors of the Canadian National Railway Company.

In 1923 the Canadian National was re-incorporated by virtue of the amalgamation of the Canadian National Company of 1919 with the Grand Trunk Railway Company. The Grand Trunk Railway Company disappeared after 71 years of operation.

We look on the date 1923 as the beginning of the system, as it was a first occasion on which the Canadian National really acquired any railway. The corporate problem with which we have been struggling ever since arose at that time. At the time of amalgamation we took under administration 139 active operating companies. They were railways, steamship companies, express companies, land companies, development companies, terminal elevator companies and companies doing almost everything which one can conceive. These constituents had outstanding at that time no less than 251 different bond issues charged against different assets bearing different lengths of security; several were perpetual, others were for a short term.

The legal officers of the Canadian National recognized immediately that this was a problem which would require very earnest study. The plans were laid at that time but little could be done for many years because of the clouding of the title of the assets of these various companies. We could not bring about amalgamation because had we done so the new company would in each instance become liable for the debts of the components, those companies which went into amalgamation, and we did not wish to see all the assets of any new enterprise charged in perpetuity with the debts, for example, of the Grand Trunk Pacific or any other company when the debtor company was limited geographically to lines of railways between given points. So we had to make plans before we were able to make any progress. Then again we had this problem of the four incorporation of the Canadian National Railway Company itself, the first being in 1919, another followed in 1923, it was re-incorporated again in 1933, and then came the statute of 1936.

Consequently when people in the years which have gone by have asked us what are the corporate powers of the Canadian National it has always been extremely difficult to answer categorically.

By the beginning of 1955 we had this mass of background statutes. We had the four statutes dealing specifically with the Canadian National, the legal effect of them being four incorporations and then we have 25 statutes which are shown in the second schedule on the last page of this bill, all having a direct bearing on our current operations.

As the years passed, the bond issues to which I referred a moment ago were very materially reduced in number by lapse of time permitting the calling of the bonds, or by lapse of time maturing the issues themselves. Also we embarked on an endeavour to buy in the perpetual securities, and we were successful in obtaining almost all of the outstanding perpetual bonds. As of today there are very few of that type of security still outstanding. As a matter of fact we only know of one holder; the others have vanished. But these things have made it possible to discharge bonds, discharge trustees, to the point now where we have but six of the old 251 bond issues remaining and those are maturing within the very next few years.

Now, that was the condition. Five years ago we could foresee that within the next five or ten years this problem would have simplified itself. We took under active discussion the laying of plans to simplify the entire corporate structure of the railway and to put its house in order. We recognized at that time as we recognize today that probably and theoretically the ideal would be to have a single entity, one corporation which owned and operated everything which we possessed. That we cannot achieve for the time being but we did set our sights then to reduction of our rail operations into one railway company. We would like to get rid of all the others. The components of that one railway company individually hold charter powers to build between the points in the geography of Canada which were covered by the original statute; they have different powers to do different types of business in different ways. It appears to us that the sensible plan in any railway, and particularly in the case of the Canadian National, is that the powers

over all the Railway ought to be the same. We have endeavoured to put together in Bill 351 the rail powers that existed in our old legislation—and when I say old I mean the 25 statutes that are enumerated—dropping certain provisions which have never been used and which do not adequately serve the purposes which they were intended to serve.

We are endeavouring to achieve that by amalgamation, into the old parents, of all of their corporate children; for example, the incorporations created by the Grand Trunk. All those companies which were acquired by the Grand Trunk by stock ownership we hope to bring back into the system by direct amalgamation with the Canadian National Railway Company which is just the Grand Trunk under another name. The Grand Trunk Pacific subsidiaries will take to the Grand Trunk Pacific in the first instance and then to the Canadian National. The Canadian Northern subsidiaries are some of the children we are going to take—and we have begun—into the Canadian Northern Railway Company, and then when we get it all back to these $2\frac{1}{2}$ components—Grand Trunk Pacific being the half—we will bring it home to the Canadian National Railway Company, and all the rail operations will be in that name. In other operations we have had to go into the charters of these various companies and pick them out. For example, the Canadian National hotel system which we operate today as a system actually had its beginning in the Grand Trunk Pacific Development Company in respect of some hotels, the Ottawa Terminal Railway Company in regard to the Chateau Laurier Hotel in this city, the Canadian Northern System Terminals, the Inter-colonial Railway, and in the aggregate system different types of corporate holdings, but we held the titles in eleven different manners. We have picked these hotels out of the places where they were and have brought them all together under the operating name of Canadian National Hotels Limited.

Within a matter of a very short time—months—that company will be fully established and will be the hotel operating entity with no corresponding operations to be found in these other places. The same thing is true of communications. The powers of the Canadian Northern Railway Company respecting communications are different from those possessed by the Grand Trunk Pacific and different again to those possessed by the Canadian National. They should be uniform and we are bringing those together now into a telegraph operating company. The practical plan is to proceed to have one rail company, one steamship company, one hotel company, one communication company, and one land company.

We recognize in addition to that we shall probably have to have a few miscellaneous companies, but they will be minimum in number.

That, gentlemen, is really the atmosphere in which we came to the bill. The bill, as I said, represents a consolidation of the corporate powers contained in the 25 different statutes on page 19 of the bill. The language is not in every instance identical to the language in the sections which are being repealed. Those statutes, I imagine, were the result of the composition of probably 25 different individuals. They are not alike in themselves and we have, with the very great help of the Department of Justice, tried to put this language into the draftsmanship of one person so that it will remain more comprehensive than it would otherwise.

The only omissions from the legislation—and I shall give you particulars of them later on—are those sections which are duplicated—and there are several—and those sections which have long since ceased to have any further value, the method of financing the Canadian National having changed, and those sections which perform no function at all.

The objective has been to tidy up the legislation so that anyone can tell what the Canadian National is. They will not have to look through all these

books. We have proposed the extension of the powers which are referred to in the explanatory notes opposite the first page of the bill. The extensions are in every instance intended to be corporate in nature; they are in most instances merely a consolidation of the powers which we already possess in railway companies which will disappear within the next few years and we wish to be certain if they are brought into this entity the power will exist to carry on the operations which were carried on under the old incorporations.

We hope this bill will look after everything and that we will not have to come back here at some time in the future; but that no one can tell, and it may well be that we have created situations and overlooked things which we should not have. But I must say in that connection that in the preparation of this we have had about 100 statutes to play with, a very large mass of corporate history much of which has been collected for 30 odd years. We have tried to put together here something which is understandable and something which will operate in the way it should.

Mr. GREEN: What about the Intercolonial Railway.

The WITNESS: The Intercolonial Railway has no corporate existence. It is the direct property of the federal Crown and is entrusted to the Canadian National Railway Company for operation and management under the terms of the Canadian National Act of 1919.

By Mr. Nesbitt:

Q. How many of these companies still in existence have shareholders other than Her Majesty?—A. Of the companies shown in the schedules, I do not think there are many, but I shall be delighted to give you the exact figures.

Q. If there are any private shareholders other than Her Majesty, they would be very small?—A. Yes.

Mr. JOHNSTON (*Bow River*): Would those shares all be held by Canadians or are some held possibly by outsiders?

The WITNESS: No. In instances where there are outstanding holders, they are thought to have been held mostly by people not resident in Canada. We have never been able to find them. Some of these very old companies had outstanding minority holdings, but the records have long since ceased to exist—in some instances, almost 100 years—and there is no trace of who they are and in any event the holdings are very small.

By Mr. Fulton:

Q. Was the Intercolonial Railway synonymous in the old days with Canadian government railways?—A. The latter was more embracive and extended beyond the Intercolonial and was the term used to collect all of the Crown rail operations.

Q. It included the Canadian Northern and Grand Trunk?—A. No. It never did include, to my knowledge, any of the corporate operations, but did include operations such as the Intercolonial Railway, the National Transcontinental Railway and the Hudson Bay Railway, all of which were Crown operations without any corporate existence.

Mr. CAVERS: From the explanation notes to the bill it appears that the bill gives authority to the railway to construct short lines without parliamentary authority. What do you mean by short lines? What is the extent of the line which can be authorized by the company without parliamentary assent?

The WITNESS: It has reference to lines of railways not exceeding six miles in length.

By Mr. Hamilton (York West):

Q. Mr. MacMillan, was there any relation between the bonds of these various companies? You indicated they were tied down to certain sections of railway and certain assets, I assume of those individual railway companies. Did the guarantees extend from one company to the other? That is, although the Grand Trunk Pacific was quite separate would there be a guarantee to bind it to the Grand Trunk Railway as well as the Pacific Railway?—A. Yes. I would like to make an explanation of what you have in mind, but I should not like to be held to account for the entities I am going to mention. The pattern went something like this. The Grand Trunk Pacific Development Company possessed assets—they had terminal elevators, a couple of hotels and other fixed non-rail assets. The stock of that company was owned by the Grand Trunk Pacific Railway Company. The Grand Trunk Pacific Railway Company likewise owned the stock of, let us say, the Grand Trunk Pacific Branch Lines Company. When the Branch Lines Company required funds to make a rail extension, they would give as primary security a mortgage on the new line of rail together with the old line of railway owned by that corporate entity. The stock of the Grand Trunk Development Company, which you remember was the company owning the non-rail things, such as hotels, warehouses and so on, could quite easily be—and was—in many instances also covered by mortgage.

The whole of the obligation of the Grand Trunk Pacific Branch Lines Company was guaranteed by the Grand Trunk Pacific Railway Company and in some instances further back to the Grand Trunk Railway Company. The result in that example is that we could not deal with the affairs of any one of those four companies until such time as that mortgage had been discharged. We could not consolidate or deal with the Grand Trunk Pacific Development Company because we could not get the stock. The stock was under the mortgage. We could not amalgamate the Branch Lines Company into some other railway company because that would have made the new company resulting from the amalgamation liable for the mortgaged debt of the Branch Lines Company, and so on. That was really the problem and it was a question of untangling all these things.

Q. That system of guarantees then necessitated taking over all of these companies, and you could not segregate them and determine which one might be able to operate on its own without getting government assistance and which might not ?—A. That, of course, is into another field. These two systems were one; they were entities insofar as railway systems were concerned. It was only in respect of their corporate background that all of the "scrambled egg" became apparent. They had in most instances a single operating head and he was boss over the whole of the operations irrespective of the corporate factor.

Q. I note that you said 1916, I believe, was the last very vigorous year of the Grand Trunk?—A. I did not mean to convey anything by that at all. My point of 1916 was entirely because I came across a tabulation of 1916, January 1, 1916, and I thought it might be of interest to you gentlemen to tell you what the picture was as of that time. It intrigued me, for example, that the Grand Trunk existed for 71 years and it was before the parliament of Canada 71 times. But not in the same years and not always once a year; but it is a coincidence of figures which arises.

Q. The one question which is outstanding in my mind which I hope to have answered is, there was no opportunity apparently to segregate those railways which might be able to be going concerns and those which would require government assistance, because of inter-relationship of those bond guarantees?—A. That is fair; but there was another reason. It was because the whole of the undertaking of the Grand Trunk Pacific by one or another

means was underwritten by the Grand Trunk Railway Company and the Grand Trunk Railway Company as such had no operation west, roughly, of North Bay. Its operating zone was the hub of Ontario, Montreal and the east and in the most desirable location from the point of view of a railway, but that entire operation was hypothecated on the debts or obligations of the Grand Trunk Pacific.

By Mr. Fulton:

Q. Mr. MacMillan, there is not very much in the bill itself regarding capitalization with reference to share capital. I notice, for instance, you have pointed out that the Canadian government railways are entrusted to the National Company for operation. But apparently they are not capitalized or do not have any share capital. I wonder why? You give this whole corporation a share capital and the other companies being taken on do, I understand, have different amounts of share capital. Why not put that on a uniform basis and give it all a share capital held by the Crown in the right of Canada and the government appoint directors of that company? You are still going to have some of your operations represented by share capital and some not?—A. Well, that may be the case, but I do not look upon it in that way actually. The Crown properties all come to us under entrusting orders in council; they are not regarded as assets of the corporation, the Canadian National Company, but, certainly are responsibilities of the Canadian National Railway Company. The rails, lines, and assets which are the direct property of the corporation are operated, insofar as I know, and I have never thought of this feature admittedly, in the same manner as the entrusted property. We do not segregate; we do not, when we have a problem to resolve, think, now is this a corporate problem or an entrusting problem, but rather once it gets in there it is just part of the very great problem of administering the property. To do as you suggest would require that the Canadian government railways, using the term in its broader sense, would have to be brought under some type of corporate existence.

Q. That is right.—A. And evaluations made on them. It would be a very difficult problem to make a valuation that was realistic and thus create a capital that was realistic. I do not really know what would be achieved if we did it; it has never been done. It was just something else to do.

Q. I was thinking, as a matter of fact, for purposes of studying the financial results of this operation, if you had them all in there on a comparable basis so that you could arrive at a capital value for the purposes of studying the financial results of operation—one of my colleagues mentioned it might perhaps simplify in due course the problem of depreciation and so on. You are undertaking a major job of consolidation and I wondered why the other step of incorporating the Canadian government railways was not taken at the same time. Would it, to your mind, be a logical final step? I am not asking you to say it should be done now, but is there anything in the point to your mind as a corporation lawyer?—A. No, I do not think there is, and I say that with all respect, for this reason, that the test in commercial undertakings—and that is what you suggest now—is how much are the earnings in terms of capitalization, in terms of equity holding and in terms of the ownership component of the company. In the Canadian National, as you will remember, the Capital Revision Act of a very few years ago very clearly spells out what happens to earnings of the Canadian National Railway Company; they all go to the owner. In this instance, the owner, being the Crown, is the same individual who owns these entrusted lines. So that creating corporate value to the C.G.R. and its assets would not vary the amount of money that goes back to the owner at all. It is the same thing as if you or I owned a corner

grocery store outright, and in the course of our business we incorporated it and went through the normal family incorporation where we had our wives, children and brothers being directors, but 100 per cent ownership was in your name, and then it was found that the business of that little store would be enhanced if we were to get it a horse and a rig to make deliveries, and you had one at home and sent it down to be used in the grocery store; it would not make any difference to you as sole owner whether the asset represented by the horse and cart were taken into the corporate picture at all because you get everything which comes from the operations of the store.

Q. Would it not for purposes, among other things, of depreciation, makes a difference how you charge the depreciation of the horse and buggy to the corporation? You are now liable to income tax, I think.—A. I do not profess to be a depreciation expert and of course it is reasonably true, I would think, and almost fundamental, that a company cannot depreciate assets which it does not own or which do not appear in the balance sheet. But I might be wrong.

Q. The assets of the Canadian Government Railways do appear in your balance sheet as I recall your annual report. I am not going to press it, but it seemed to me it would be a final completion of the tidying up process to have put them all on a corporate basis so that they are capitalized on a uniform basis throughout for purposes of depreciation; and depreciation we hope one day will be a real problem to the C.N.R. You would have all your assets dealt with on the same basis.

What is going to happen to the Grand Trunk Western? Can you get this under this bill?—A. No, we have not attempted to deal in this legislation with any American incorporation, rather with the operation of any such incorporation. The American companies are included here for the purpose of definition and for the purpose of bringing it altogether in one statute, but of course the problem to be encountered in the amalgamation of American subsidiaries into the parent is one of taxation and an operating problem. It has always been regarded as sounder business to maintain the American corporations.

Q. What is its relationship to the Canadian National company and what will its relationship be after the bill?—A. There will be no change at all. The relationship today is that the Grand Trunk Western Railroad Company is a wholly owned subsidiary of the Canadian National Railway Company because it was in that relationship at the time of the Grand Trunk Railway Company of Canada, and at amalgamation the Canadian National acquired the Grand Trunk Western. It is operated more or less as a region, much the same as the operations in western Canada are conducted from Winnipeg and the operations in central Canada from Toronto, and so on.

Q. And it is incorporated in the United States?—A. Yes.

By Mr. Nesbitt:

Q. In the example you gave about the grocery store, at this moment I agree that the utilization of the horse and buggy in that business was certainly part of the cost of doing the business and to show whether the enterprise were profitable in itself, certain provisions and allowances should be made for the use of that.—A. Yes indeed.

Q. Isn't that good accounting procedure?—A. Yes. I admit that, and that is done in the railway with the C.G.R. properties. All the operating expenses are taken into account and all the revenues.

Q. By the statute before you, these are brought right into your consolidated accounting?

The CHAIRMAN: Shall clause 1 carry?

Carried.

Clause 2. Are there any questions on clause 2?

By Mr. Carter:

Q. Mr. Chairman, could Mr. MacMillan list the various railways which are included under the category of Canadian government railways?—A. Well, they are railways in so far as they are physical things. What we call the National Transcontinental Railway had no corporate existence other than it was built by a commission established by statute. Roughly it operated or existed between Quebec City and Winnipeg. Now, there was an extension in the maritimes. The Hudson Bay Railway, again not a corporate but a physical entitly, began immediately north of The Pas and goes north to Churchill. Then the Intercolonial Railway—of course, veryone is familiar with it—it serves the maritimes. As such, those are the Canadian government railways. There are other little bits of trackage which presumably are embraced by the general phrase "Canadian government railways", but we do not think of them as such.

Q. What is the essential difference between the two categories? Is the essential difference that the one was built by the Canadian government apart from the Canadian National Railway Act and that the others were owned and operated by the Canadian National Railways either built or acquired by the Canadian National Railways?—A. That is right.

Q. In which of these categories does the Newfoundland Railway come? —A. The Newfoundland Railways are really neither, but I should have included them as being one of the Canadian government railways. I overlooked that, and for that I apologize to you. The Newfoundland Railway, you will remember, was an asset of the commission government of Newfoundland at the time of confederation with Canada. My recollection is it began in the hands of private railway contractors and railways operators, and that through the passage, or with the passage of time, it became necessary for the government of Newfoundland to come to its aid and it passed into the possession of the government. Now, with Confederation, the Newfoundland Railway came along to the federal Crown and passed into the possession of the Canadian National for management and operation.

Q. Who physically owns the Newfoundland Railway? Who is the owner now of the Newfoundland Railway? Does the Canadian National Railway own it?—A. No, no. It is owned by the people of Canada.

Q. Is that not true of all the other railways, in effect?—A. But in a different way, the difference being that Canada as such owns this building in which we are sitting. Canada through stock ownership owns any of the Crown corporations. That is the difference.

Q. Is there any essential difference in the operation or the administration of the two categories?—A. No.

Q. None whatever?—A. No.

Q. Whatever you do for one is done for the other?—A. That is hardly the situation. It is not because of any segregation flowing from the type of employment at all, but rather the same managerial tests are applied to operations whether they be corporate or entrusted.

Q. Do any of the Canadian National Railways pay municipal taxes?— A. Yes, but you used a phrase there which is one of the reasons we bring this bill along. The term Canadian National Railways is merely a descriptive phrase, a collection of words which the statute many years ago authorized us to use to describe the operations of all these enterprises. Now, in so far as the phrase is descriptive of corporate operations, taxes are paid.

Q. You agree that the Canadian National Railways do pay municipal taxes. That is correct?—A. The companies in the Canadian National Railways pay municipal taxes, yes.

Q. Is that true of the Canadian government railways? Do they pay municipal taxes too?—A. Not as such. The pattern with respect to municipal taxation of rail property is patterned as nearly as possible after the general yardsticks provided by the Crown in the administration of any other asset of the Crown. No payment of which I am aware is made as taxes.

Q. Why not?—A. Because the Crown as such is not liable to municipal taxation. But payments are made to municipalities in lieu of taxation.

Q. They do that?—A. Oh yes.

Q. Is that true of the Canadian National Railways or the Canadian government railways?—A. They both do; actually. We do.

Q. I have one more question: when the Newfoundland Railway was taken over by the Canadian government and transferred to the Canadian National Railways for operation, there was no evaluation placed on the assets of the Newfoundland Railway. You did not set up the assets in your books at all as to the valuation of the physical assets of that railway, that is, the property, the buildings, the tracks, the cars and so forth?—A. Your question is this, I take it: that at the time of Confederation was any attempt made to determine the valuation of the assets of the Newfoundland Railway, and that valuation recorded in the books of the Canadian National Railways?

Q. Yes.—A. I do not think there was; not to my knowledge, no.

Q. But you have recorded the expenditures for new equipment; you have set up those figures now, and when you supply new cars to the Newfoundland Railway you have an entry of that in your books?—A. We enter it in our property account, in our capital account—all new equipment, everything we spend goes into the books.

Q. Do you include in your definition of railway the useable parts of the railway, or the fact that the railway itself is the land on which it runs?—A. Yes, but I do not feel that I really understand your question. Are you thinking in terms of the bookkeeping which follows it?

Q. No, I am trying to get back to the question of ownership. You say that the government owns the Newfoundland Railway and that the Canadian National Railways operate it.—A. Yes.

Q. Now then, what is it that the government owns? Does the government own only the track and the land and the physical buildings, or does the government also own the new equipment which has been supplied and which the Canadian National Railways has included in its capital assets?—A. I am just trying to answer your question and not evade it. I would say that the government owns everything; it certainly owns it all in one quality or another. In so far as the rolling stock which has been acquired as assets for the use of the Newfoundland Railway since Confederation, that is recorded; the cost of it is recorded in the books of the Canadian National Railways because that is the means by which the capital expenditures of the entire Canadian government railways are made; and I suppose if we were to be technical, it would be possible to say that the "X" boxcars which have been placed on the Newfoundland Railway are in the first instance the property of the Canadian National Railways, and, following through the corporate background, ultimately the property of the Crown in the right of Canada. I do not think there is any significance in the difference at all.

Q. I am not so sure about that. Do you own the use of these diesel engines that run on the track? Who owns them? Does the Canadian National Railways own them or the government?—A. It would be the same as the boxcars which are supplied by the Canadian National Railways as manager of the Newfoundland Railways; the cost of the diesel equipment is no doubt reflected in our capital account.

Q. In those diesel engines you burn diesel oil. Who should pay the taxes, the municipal taxes on that fuel? Would it be the Canadian National Railways, or would there be a government grant in lieu of it?—A. That is an operation of the Canadian government; the government in the right of Canada, the Federal Crown. The Newfoundland Railway is in operation in the name of the Crown.

Q. It seems to me that you are slipping from one category to another without any very real reason for it. It seems to me that you have here rather a distinction without a difference. I am not quite too clear on that.—A. I think that probably your problem flows from the fact that you think of a locomotive as being the railway. A locomotive is not the railway. If you look at the boxcars in a string in a freight train which may come into Ottawa, you will see that there are included Canadian National Railways cars, Canadian Pacific Railway cars, Milwaukee, Pennsylvania, New York Central, Baltimore and Ohio, Chesapeake and Ohio, and perhaps fifty different entities. Those cars at that time are part of the train of the Canadian National Railways, but the ownership of the equipment has no bearing on the railway itself.

Q. No, but the figures which you have set up in your books indicate that you claim ownership. Surely it is significant that they are physical assets?

By Mr. Fulton:

Q. That brings me back to my earlier question about the corporate structure of the Canadian government railways. I was just wondering whether actually the Canadian government railways which comprise four main systems, the Intercolonial, the National Transcontinental, the Newfoundland Railway, and the Hudson Bay Railway, whether they are actually shown now on the balance sheet assets of the Canadian National Railways, or whether they should not properly be shown on the balance sheet of Canada.—A. I think they are.

Q. In other words, when you look at the balance sheet of the Canadian National Railways which is appended to the annual report, you are not showing there the total of the railway assets operated by the Canadian National Railways. You are only showing the total railway assets owned by the companies forming the Canadian National Railways. Nevertheless on the statement of income and expenditures you are showing the income and expenditures in connection with those lines.—A. You will notice that on the consolidated balance sheet in the last annual report the investment of Canada in the Canadian government railways is shown as a liability of the Canadian National Railways to the amount of $379 million.

Q. What page is that?—A. It is page 3 of the light green insertion, the statistical statement. The figure shows, if you look under the item of "Government of Canada, Shareholders Account", the capital investment of the government of Canada in the Canadian government railways at a figure of $379,774,515.

Q. What about the assets? For instance, under assets, road and equipment property, are we to take it that it includes the lines of the Canadian government railways?—A. I am sorry. Where are we now?

Q. If we look at the other side of the balance sheet under the top item of assets, road and equipment property, the figure is shown of 2 billion 600 million dollars; are we to assume that that includes the Canadian government railway lines?—A. I am sorry but I cannot categorically answer the question. I do not know. I do not think there is anything there for the C.G.R., but I would not like you to be unduly influenced by my answer.

By Mr. Hamilton (York West):

Q. It must mean all the assets in some shape or form.—A. It may be.

Q. I think that Mr. Fulton's point is fairly well taken, and that we might as well have a complete consolidation and take it through, in the same way as we have done it with this, instead of having them listed separately under liabilities. At the present time we have got it under assets anyway.

Hon. Mr. MARLER: It may perfectly well be there, but it is away outside the scope of the bill itself.

Mr. FULTON: Mr. McMillan gave us an analysis of the situation when explaining the purpose of the presentation and effect of the bill. If the minister would say that would be a question which he should answer, then very well.

Hon. Mr. MARLER: No, I am not suggesting that. I suggest that the bill does not change the existing state of affairs, and I doubt if it would be within the scope of the bill to suggest that it should be changed or that the Canadian government railways should form part of the Canadian National Railways.

Mr. HAMILTON (*York West*): Is not the intent of the legislation to simplify to the greatest degree possible the financial set-up of the corporate structure?

Hon. Mr. MARLER: If you turn to the explanatory notes you will see that the purpose of the bill is to consolidate the various enactments relating to Canadian National Railways into one statute.

Mr. FULTON: Perhaps we should let it go, but we think it should be done.

By Mr. Green:

Q. May I ask Mr. McMillan if he could give us a list of the government owned railways with the mileages? I see that in the statement of the Canadian National Railways in its annual report about which there was some discussion a moment ago, the capital investment of the government of Canada in the Canadian government railways, is about 380 million dollars which is approximately a quarter of the total investment. That looms quite large in the general Canadian National Railways picture and it would be helpful if we could have an actual statement showing the mileage and just exactly what lines of railway are in that category.—A. I think we can get that for you.

Q. One other question: there is an Act known as the Government Railways Act. As a matter of fact it is referred to in the bill we are now considering. Do the Canadian National Railways which we have been discussing come under the Government Railways Act? Are they subject to the terms of that Act, or are they taken away from that Act by this present bill or by any other legislation?—A. The answer must be that it is about half-way between one and the other. All the operations of the Canadian government lines are conducted under practically the same rules as those applicable to the corporate lines. The Railway Act and this statute so provide, and the Railway Act especially is applicable to the Canadian government lines during the time of the entrustment, except with respect to certain sections in the Railway Act; and there is a block which deals with new construction, the location of lines, which are excluded from applicability to the Canadian government railways; so, as long as they are part and parcel of the Canadian National system, the same rules and regulations apply.

Q. The Government Railways Act gives the minister very wide power over government railways. Will he still have those powers once this bill 351 becomes law, or what happens to the provisions of the Government Railways Act? I can find nothing in bill 351 which removes the powers of the minister contained in the Government Railways Act.—A. Nothing happens to the Government Railways Act; it remains as a valid, as an existing piece of legislation. But the properties of the C.G.R. are no longer subject to its terms for as

long as the entrusting to the Canadian National Railways remains, subject only to the fact that sections 169 to 246 of the Railway Act do not apply to the Canadian government railways.

Q. You say that they do not apply to the Canadian National Railways at all?—A. No, no. We are just on a little different wave-length at the moment. The Government Railways Act is normally applicable to the Canadian Government Railways as such. The Railway Act of Canada determines the operation of the Canadian Government Railways under the entrustment order to the Canadian National Railways for administration. By this statute it is in section 15. The Railway Act which is applicable to operation of the railways is made applicable to the operation of the Canadian government railways, other than that sections 169 to 246 of the Railway Act do not apply to the government railways. The reason is that these sections of the Railway Act are the sections determining the means by which new lines are to be located and the construction thereof, which are matters fully covered in the Canadian Government Railways Act, and powers, to the extent that they must be resorted to for the Canadian government railways, are thus found in the corresponding section of the Government Railways Act.

Q. If it was decided to build a line extending the Canadian government railways, such as the National Transcontinental, that could be done under the powers contained in the Government Railways Act. On the other hand if it was decided to do something with the Canadian National Railways own line, that would be done either under the Railway Act or under this bill 351. Is that correct?—A. I think it is correct with one reservation or example; in the National Transcontinental I do not think that is too good an example, because I have never heard of an extension for the National Transcontinental, or of anything other than in the name of the Canadian National Railways, but in the territory of the Intercolonial Railway, the powers of the Government Railways Act have been utilized upon occasion, but whether they are the only means or not, I would not like to say because I do not know. But certainly in so far as the National Transcontinental Railway construction is concerned, anything done in my time has been done in the name of the Canadian National Railway Company.

Q. If there was a desire to build an extension or a branch line on the Intercolonial Railway, that could be done by the minister directly under the Government Railways Act?—A. Yes, I suppose legally, yes.

Q. In other words, there would be no limitation with regard to six miles or anything of that kind, and there is a wide open power in so far as the government railways are concerned for construction to take place under the authority of the Government Railways Act?—A. Yes, but you are leaving the impression that there are unlimited powers. You are giving me the impression that there are in the Canadian Government Railways Act to be found unlimited powers of construction. But I do not think there are. There are powers of construction up to the six miles, certainly, but I do not remember the power beyond that. I want to make this point to you in that connection: that all of these pieces of construction of railways are most expensive and that they cost a lot of money. The funds with which such construction is done are provided by the Canadian National Railway Company out of its budget, and the practice has been, to my knowledge, at any point to make long construction in no name other that of the Canadian National Railway Company, because we want to be sure that this corporation possesses the assets and that we have something to reconcile the records with.

Q. But in so far as the actual statutory powers are concerned, the Canadian Government railways, such as the Intercolonial, could be extended under the provisions of the Government Railways Act without having to have

a bill passed for the Canadian National Railways, as has been the custom in the past?—A. I would not like to answer that question because I do not know. I would have to check it up. I have never used that power.

Q. Could we have an answer to that question at one of our later sittings?—A. I would imagine so.

By Mr. Nowlan:

Q. Is there anything in this bill which indirectly affects any of the statutes under which the Intercolonial Railways was constructed and under which it operates?—A. No.

Q. There is nothing in this bill which affects anything in the Maritime Freight Rates Act?—A. No.

Q. Thank you.

By Mr. Nesbitt:

Q. My first question refers to the answer you gave to Mr. Green. On page 2 at the top, under assets. It says that this represents equipment and property to the extent of 2 billion 639 odd million dollars. Is a statement of assets or an inventory taken annually of all the fixed equipment, that is the locomotives, the cars, and so on, or how is that figure arrived at?—A. I am sorry. That question is a little beyond my province. I do not have much to do with the bookkeeping; but from my practical knowledge I would say that there is no physical inventory taken which embraces the entire system. It would be impossible to do it once a year.

Q. In other words, that figure in your opinion—I do not wish you to tie to it—A. I think that is reflected on the books of the company.

By Mr. Nesbitt:

Q. It is a general estimate in other words?

Hon. Mr. MARLER: Surely not an estimate it must be the result of bookkeeping up to the time of the statement.

By Mr. Nesbitt:

Q. I see there is an item on the liability side, accrued depreciation, on page 3, listed at 200 odd million dollars. Is there a reserve situation? Is there a reserve depreciation set up each year for the capital assets of these various companies or how is that arrived at?—A. I am sorry, I do not know.

Q. Could you possibly obtain that information for us for a later sitting of the committee? I think those two questions are rather basic and would facilitate the understanding of a number of these sections later on. Possibly the chief auditor of the Canadian National Railways would be able to provide that for you quickly.

By Mr. Carter:

Q. I would like to follow up Mr. Green's question. In the case where it is desirable to expand a service of the government owned railway, where does the responsibility rest for initiating such an expansion? Does it rest with the government or with the operating company?—A. That is a very difficult question to answer. Frankly, with all respect, I do not see what it has to do with the consolidation legislation. I would like to help you but I do not know how I can answer that question.

Q. Perhaps you could think about it and come up with an answer?—A. You and I perhaps might have a chat on it and examine it sometime.

Q. The second question which I have is: is the telegraph service in Newfoundland in the same category as the Newfoundland Railway? Is it government owned or C.N.R. owned?—A. That I can answer a bit, but perhaps not in the detail you would like to have it. The telegraph service was transferred to Canada at Confederation and entrusted to the Canadian National Railway Company for operation. Since that time we have made very substantial capital expenditures on telecommunications in Newfoundland. The cost of those expenditures is reflected in the corporate accounting of the railway company. I suppose it could be said that the skeleton is certainly the property directly of the Crown. The capital expenditures which have been made, probably, are the property of the corporation. I do not wish you to think from that, that we have made two such segregations in this system. It is all one system for operation.

Q. Not as far as municipal taxes are concerned. There are two different systems. What happens when all the original equipment has been replaced by equipment owned by the Canadian National Railways? Do the railway line and the telegraph line then slip out of the government category into the C.N.R. category?—A. No, it can never do that. That is why I tried to be careful not to leave the impression, where the corporate entity spends money, that it creates a segregation because that can never be. The entrusting corporation must have some meaning at all times and where a system is entrusted to a railway it must be the system. Nothing the company can do can ever destroy that. Until the time came when every tie, rail and bolt of the Newfoundland Railway had been replaced by the Canadian National Railway Company, the entrusting railway, the railway must still be the property of Canada because Canada has never conveyed it to the railway.

Q. Until that condition exists, the Canadian National Railway Company will still have figures on its books including that in its assets. Is that not so?—A. Yes. Again I did not wish to be categorical when I said it was included in the assets. I think I said I assume it is not in the assets. You are getting me into a realm where I know not of what has been. All I know is what I have picked up, which is hearsay.

By Mr. Fulton:

Q. A while ago you said, in answer to Mr. Green, if any extension were built to any of these Canadian government railways entrusted to the Canadian National Railway Company they would be built in the name of the Canadian National Railway Company under the practice which you said prevailed ever since you became associated with it. Could I suggest that might be another argument in favour of incorporation of those Canadian government railways entrusted to your company. Otherwise the situation must be that the Canadian National Railway Company as a corporation is building extensions which, in essence, will form a natural part of the system of the Canadian government railways. Yet the ownership of that system will then be divided, one part of it being owned by the company, but the other part of it being owned by the Canadian government. I am wondering if it is not in the long run going to create a very complicated and confusing picture of ownership, where you have parts of a line which in their whole form an operating whole, owned on the one hand by the Canadian government and on the other hand by the Canadian National Railway Company. Would that not be the situation under the system you have described?—A. My best answer to that has to be that we have to creep very slowly before we can run. I do not know whether that is a desirable result. Certainly we have not, in our planning, gotten anything to that point. I told you a while ago that the legal ideal is one entity; therefore, everything goes; and I say that now. But, from the practical point of view, that cannot be achieved and all we can do is to do these steps. I also said that we may

be back. We do not know that we have in this bill everything that should be there, and we may be back again sometime in the future. But we wish now to go on with this step and see what the result is.

Q. Would it be possible to incorporate those parts of the Canadian government railways which have been entrusted today to the Canadian National Railway Company for operation?—A. Would it be possible to incorporate a company, do you mean?

Q. Yes.—A. Legally there is no problem.

Q. Perhaps I could leave it for consideration in later years.

By Mr. Nesbitt:

Q. Could I go one step further? Is there any real reason for going on even with the steps suggested by Mr. Fulton, even to have a separate corporate entity for a railway, hotel, land and development company and steamship company, which I think you thought was the idea which we should be looking towards? Is there really advantage of that in an operation of this kind? Is it not possible that everything could be owned by one corporate entity, and then the bookkeeper or the accounting set-up, simply reflects the different divisions of the company's operations?—A. I think you misunderstood me before, because what I said just now was that the legal ideal, and my dream, is to see it all in one complete entity. What the accountants do, I do not care. But that is something which we are unable to achieve today. Our immediate plan contemplates these five or six other things; because, you see, it is just like sorting mail or anything else where you have to have a receptacle into which you can toss the components when the sorting is going on. That is why we want these five or six companies, then, for a sorting use, and the ideal is to build it all into one.

Mr. HAMILTON (*York West*): The answer would be a saving in cost?

The WITNESS: That is a very difficult assumption to make. These decisions create legal problems more than anything else and lack of understanding more than anything else. The railway as a railway is operated as an entity and the superintendent at any given point does not know which line between any two points is not the property of the Canadian National Railway Company, which happens to be the problem of someone else. I do not think there would be any saving in that respect.

Mr. LEBOE: Would there be any difference in municipal revenue if the government railways were brought under the Canadian National Railways incorporation? I am wondering if the municipalities are not getting as good a deal under the government ownership as if it was brought under a corporation?

The WITNESS: I would not know the answer to that.

By Mr. Johnston (Bow River):

Q. We are now discussing the interpretation of different terms, and my thought, of course, is along the same lines as it was when I was speaking in the House when the minister indicated that later on in the bill he would bring in an amendment to these things particularly as they affected the trucking industry of the Canadian National Railways. I am wondering about this term under clause 2 (b) (ii); the term there is "property". Could that term there be wide enough to include the trucking industry of the railways? The same thing applies in (iii) to the National Company. Then you will notice down further in (iii):

> ...the National Company ... unless expressly excluded, includes all properties, works, interests, powers, rights and privileges, incidental to those so entrusted and commonly used, operated and enjoyed in connection therewith.

Now, are any of those terms sufficiently wide enough to include the trucking operations of the railway?—A. I think the answer to that is very simple. This is not the Canadian National Railway Company at all. These are the assets of the Canadian government railways. They have their basis under the entrusting order in council. It is an assignment for management. That is really what it amounts to.

Q. In clause 2 (c) (i) of the bill you use the term "the National Company" and in (c) (ii) "all the companies in Canada mentioned or referred to in the First Schedule and any company formed by any consolidation or amalgamation of any two or more of such companies...". Are those terms used there wide enough to include the trucking industry of Canada?—A. This does not create any rights or limitations at all; it is merely the meaning. It is attributed to this phrase, "Canadian National Railways".

Q. That is exactly what I wanted to know. For instance, through your schedules, there are terms in the First Schedule which definitely include national trucking. There are terms there that do refer to the trucking industry, and I am of the opinion—although I could be entirely wrong as I am just trying to get some idea across here—that Canadian National Railways, or the term "national company", seems to me is sufficiently broad under the terms of this Act so that railways would be allowed to start up or conduct a trucking operation, and that that trucking operation would come under a clause of the bill. I do not want to anticipate those clauses, but they are clauses 18 and 29, and they would give the railways such wide powers that they would be able to operate in a province regardless of provincial legislation.

The Hon. Mr. MARLER: It seems to me at the moment what we are doing in this clause 2 is merely to give a meaning to the terms we are using later on in the bill. But we are not in clause 2 giving any powers or adding to the corporate structure or capacity of any one of the constituent parts either of the Canadian government railways or the Canadian National. I think these terms are merely to explain what is meant by Canadian National Railways when we use the term later on in the bill and also to explain what is meant by the national company when we will later on refer to it in other provisions of the bill instead of saying specifically Canadian National Railway Company. I think these are merely descriptive terms.

Mr. JOHNSTON *(Bow River)*: That is exactly what I had in mind. What I want to be clear on is wherever we use the term "national company" throughout this bill, or the "Canadian National Railways" throughout this bill, that the term which is used in part III of the First Schedule, the Canadian National Transportation Limited, could not be included in that. Do you see what I mean?

Hon. Mr. MARLER: Yes.

Mr. JOHNSTON *(Bow River)*: When we come along to part II of the schedule I understand you are going to suggest an amendment to that.

Hon. Mr. MARLER: But not at this point, because it is not the appropriate place.

Mr. JOHNSTON *(Bow River)*: My question when you make that suggestion is going to be, are there any other places in the Act where the Canadian National could operate trucks even though we take out that one company, Canadian National Transportation Limited in part III of the First Schedule. That is why I am concerned about this definition now.

Hon. Mr. MARLER: Quite candidly I do not think the definition is the place to look for the facts. I think you must look for the facts in other clauses of the bill. When you come to those clauses, then I think you will see how extensive they are and whether they should be or should not be restricted.

Mr. JOHNSTON *(Bow River)*: I agree with you there, Mr. Minister, and I will let the question ride now until we come to those other clauses, having in mind I have brought it up, and if there are any places where we must refer back to the definition, that it be permitted.

Mr. HAMILTON *(York West)*: I am trying to understand Mr. Johnston's point. I think it is this, that included in the definitions clause is a large group of companies that notwithstanding the deletion of one specific company in Part III of the First Schedule, would leave quite a large group which might still carry out the powers, if they are contained in their original charter or statutes, and that they could operate various types of transportation equipment. I am wondering if it is not too late then if we get down to the clause, because we are only deleting one company.

Hon. Mr. MARLER: It was never intended to delete any company in particular. As I said in the House the other day, what is intended to be done, when we come to clause 18 dealing with the declaration of works for the general advantage of Canada is that the companies listed in part III of the First Schedule should be excepted from the declaration. I mentioned the Canadian National Transportation Limited particularly because the subject had been mentioned in correspondence to me. It was not the intention to delete the name of any company from the schedule but merely to see that the declaration of general advantage does not extend to and cover the companies listed in part III.

Mr. JOHNSTON *(Bow River)*: Could we go so far as to say that the expression used in clause 18 "for the general advantage of Canada" would not apply to the term "national company" if that would include Canadian National Transportation Limited?

Hon. Mr. MARLER: I think we cannot very conveniently discuss both clauses 2 and 18 at the present time. I suggest that we deal with clause 18 on its own merits when we come to it.

Mr. FULTON: In these entrusting orders made by order in council is there a standard pattern or order in council which has been involved over the years defining the rights and powers of the company to operate these lines?

The WITNESS: Yes. There have not been very many of them.

Mr. FULTON: Could you file it for the information of the committee, which would give us a general idea of the terms under which these lines are entrusted?

The WITNESS: Yes, I think I can.

The CHAIRMAN: Shall clause 2 carry?

By Mr. Green:

Q. I would like to ask for some further clarification in regard to the definition "Canadian National Railways". In clause 2(i) it is described as including the national company. Then in (ii): "all the companies in Canada mentioned or referred to in the First Schedule and any company formed by any consolidation or amalgamation of any two or more of such companies." And then in (iii): "all companies in Canada controlled directly or indirectly by the National Company and declared by the Governor in Council to be comprised in Canadian National Railways". I take it from that declaration that any American subsidiaries are not included in the definition of Canadian National Railways. Is that correct?—A. Yes.

Q. And also that any Canadian government railways are not included in the definition of Canadian National Railways. Is that correct?—A. That is correct.

Q. In subclause (iii) you say:

All companies in Canada controlled directly or indirectly by the National Company . . .

Could you give us an example of a company that is controlled indirectly by the national company?—A. Grand Trunk Pacific Development Company would be an example. I do not know whether it is the example contemplated there. The stock of that company is owned by the Grand Trunk Pacific Railway Company and the stock of that company is owned by the Canadian National Railway Company. It is not a direct thing but it follows through.

Q. Are there any companies in which the Canadian National has an interest but not the control?—A. Oh yes. There are jointly operated properties in which we have a 50 per cent interest, the other 50 per cent being in the hands of the Canadian Pacific.

Q. That, of course, would not come under the definition?—A. No, not of Canadian National Railways.

Q. Then clause 13 provides that "The National Company may use the name 'Canadian National Railways' as a collective or descriptive designation of either railway or railway works comprised in National Railways". Now, that includes American lines and government railways, and yet you are using exactly the same name. In other words, in clause 2 "Canadian National Railways" means one thing and in clause 13 "Canadian National Railways" mean something quite different?—A. I do not think that is a fair comment. Clause 2 defines the meaning of Canadian National Railways and provides you with a definition for the purposes of this legislation. That context and the use of it there enables us to reduce the drafting of this legislation, I would think, by at least 25 per cent, because, rather than using the phrase, all of these things would have to be spelled out in many places. Clause 13 on the other hand has nothing to do whatever with the significance of the phrase in the statutes but therein provides the management of the property with a name which it can paint on the side of its box-cars and passenger equipment and/or anything, for that matter, and may use it to cover the whole operation, just like an umbrella. It has no legal significance whatsoever.

Q. I merely point out you use exactly the same words, and they mean two different things because clause 13 covers all lines of railway or railway works comprised in national railways, and national railways in clause 2 is defined as comprising not only the Canadian National Railway but also the Canadian government railways and/or the companies not in Canada, mentioned or referred to in the First Schedule. In other words, it takes in a much broader field?—A. Yes. It is everything.

Q. It would seem to me that there should also be some method worked out so that you do not have Canadian National Railways meaning one thing in one clause of the bill and a different thing in another part of the bill.—A. I do not think it is a different thing. In the interpretation clause we have both Canadian National Railways defined and National Railways defined. It would be quite unacceptable, I suggest, to the people of Canada to have us use the two words "National Railways" as being descriptive of everything we operate. The name has always been Canadian National Railways. This appeared in 1919 in the first charter of the Canadian National Railway Company. It is not anything new. At that time it was used to describe the works of the system as it had existed, and it has been repeated time and time again. It is merely a descriptive term made available to the company to cover all its operations, as we use it in advertising and for other means, and it has no significance whatever.

Q. If, in clause 2, you used the words "Canadian National Railway" instead of the plural "railways", then you would have a distinction?—A. No. We

could not do that, because the Canadian National Railway would be very confusing unless we put that "s" on it, because the Canadian National Company is a very different entity to Canadian National Railways.

By Mr. Nesbitt:

Q. Subclause 2 (c) (iii) says: "all companies in Canada controlled directly or indirectly by the National Company and declared by the Governor in Council . . .", and so on. Now, does "directly" or "indirectly" mean—or does "controlled directly"—mean theoretic control, in other words more than 50 per cent of shares or de facto control, if any companies can actually be controlled by owning not less than 50 per cent of the shares?

Hon. Mr. MARLER: Is it not referring to the manner of control, as it were, one holding the control directly, or indirectly by means of some company that is interposed? Surely it is not a question as to the kind of control, whether you have practical or absolute control mathematically, and it seems to me it is described whether or not you are holding it directly or indirectly.

Mr. NESBITT: I was referring first of all, Mr. Minister, to the word "control". Does that mean absolute control or practical control?

The WITNESS: May I answer that? I rather think that the wrong significance has been taken out of this subclause (c) (iii). In any event that subclause as of today does not bring anything in under the Canadian National Railways at all. It is a clause that determines the qualifications of companies which might in the future come into this definition.

By Mr. Nesbitt:

Q. Yes, I quite understand that.—A. It is with regard to declarations by the Governor in Council to be comprised in the Canadian National. In the 1952 and 1919 statutes there was no restriction against the declaration of companies not owned by the Canadian National, and that is new in this consolidation to the extent that these declarations have to be restricted to companies controlled directly or indirectly, and it means control-ownership.

Q. Control means ownership?—A. Yes.

Q. Does that mean full and complete ownership—over 50 per cent, or less?—A. I would say 100 per cent. I cannot contemplate the Canadian National taking into its bosom as part of the corporate family any company in respect of which we did not have 100 per cent ownership, because that is the negative of what we are trying to do here. We are trying to reduce and get it down. We have not bought companies as such for a long time where something of that nature comes along—it is the assets which flow and which are procured. As a pattern we do not take the corporate entity any more because we do not want minority votes.

Q. Then you may use the word "control" there as actually meaning 100 per cent-owned?—A. Yes.

Mr. JOHNSTON *(Bow River)*: Mr. MacMillan said we were probably taking the wrong meaning out of these expressions, and it was not intended to mean exactly what we are trying to imply it might mean. But I would like to draw to his attention that, when we pass this legislation, any interpretation we give here on the committee would not have any legal significance whatever, because we must take the exact working of the Act to get the definition of these terms. It does seem to me, when we are looking at clause 2 (c) with respect to the Canadian National Railways, and then when we refer to clause 13 they use the term "the National Company", and that does mean the Canadian National Railways or it could mean the National Railways. That takes in a lot of territory and brings me back to my other question—and I do not want to

labour the point—but when we use the term the National Company or the term the Canadian National Railways, does that also include something else which could be a trucking transport business? I know that the minister has given us his assurance that that can be properly dealt with, and I am willing to let it stand at that, but I want to draw to the committee's attention that there is a great deal of ambiguity in the definition of terms, and when the Act is being interpreted in the court, the court must confine itself to the definition as we are outlining it here today.

The CHAIRMAN: Shall clause 2 carry?

By Mr. Green:

Q. May I ask Mr. MacMillan if subclause 2 (*g*), describing "telecommunication", is wide enough to cover radio and television stations?—A. I might tell you, Mr. Green, that this definition of telecommunications is the definition to be found in the COTC Act, and we utilized that definition because we thought it was the most current pronouncement of parliament on this type of thing. You notice that the word "radio" is here and is included right in it. You asked me if I thought that was one of the things—it is a very broad definition, certainly.

Q. I take it that it would also include television?—A. Television?

Q. Yes.—A. Television, of course, is the result of communication rather than communication itself. It would cover the transmission of television, yes.

The CHAIRMAN: Shall clause 2 carry?

Carried.

Shall clause 3 carry?

By Mr. Fulton:

Q. On clause 3 I should like to ask Mr. MacMillan whether this will, in effect, produce any change, or whether it will merely continue in existence as the present corporation. I will put it this way; will it merely continue in existence—a presently existing corporation—or will it have the effect that the company now to be known as the Canadian National Railway Company will embrace a large number of other corporations which were formerly known by separate names?—A. No, the answer is that the company that will be created will replace the four Canadian National Railway companies I told you about a while ago, and its name will be the same. The Canadian National Railway companies are preserved, and the declaration is made there that all these things are declared to be the one company, and that one is the Canadian National.

Q. Well, the effect of that—I think it will be important to litigants, and unfortunately the railway is sometimes engaged in litigation—that with the exception of the Canadian government railways any action arising out of railway operations in the future can be brought in the name of or against the Canadian National Railway company, whereas previously the litigant had to be careful that he brought it against the right corporate entity.—A. This clause will have no effect whatever on that, Mr. Fulton, but as you well know, we have never been inclined to get behind the corporate cloak in litigation brought by private people; the policy of the company has always been consistent to bring the action against the proper one and in most instances we have not raised it. We do not like action in the name of and against Canadian National Railways because the plaintiff acquires no rights, in my humble opinion, from a judgment of that type, because the Canadian National Railways has no corporate existence.

Q. I was wondering if in the future it would be brought in the name of or against the Canadian National Railway company?—A. It will be the same as in the past. There is no change at all as a result of this.

Q. Let us say, in a crossing accident in western Canada which gives rise to litigation, it will still be proper to bring it in the name of or against the Canadian Northern Pacific Company?—A. Yes.

Q. And that will still provide notwithstanding clause 3?—A. Yes, clause 3 does not deal with matters of that kind at all. It simply attempts to preserve and declare to be one the companies created in 1919, 1923, 1933 and 1936, and we say those are all one company and are continuing under the name of Canadian National Railway Company.

Q. And for the rest of your railway operations everything then will be brought under one or other of the other four companies which remain?—A. I am sorry, I do not think I understand.

Q. I think you told us earlier that the step being taken under this bill was to amalgamate or bring in under the one roof all the subsidiaries, for instance, of the Grand Trunk and the Canadian Northern, and to bring them back to the parent company?—A. Not under this legislation. That I explained was the pattern we are following. Ultimately we can carry it by separate conveyances, amalgamations and other things, and we have reached the point where we think this consolidation ought to be done. But this statute will have no immediate bearing on the amalgamation of the Canadian Northern and Grand Trunk Pacific at all.

Q. I am glad that you explained that. I was confused as a result of something you said earlier and may have misunderstood you.

The CHAIRMAN: Shall clause 3 carry?

By Mr. Green:

Q. There is reference in clause 3 to amalgamation of the Canadian National Railway Company and The Grand Trunk Railway Company of Canada. Was it authorized by statute?—A. It was done pursuant to statute.

Q. There is no reference in the bill to that particular statute. Could you tell us which one it is?—A. The amalgamation question?

Q. Yes.—A. Surely, chapter 13, 1920.

The CHAIRMAN: Shall clause 3 carry?

Carried.

Clause 4.

By Mr. Hamilton (York West):

Q. In connection with clause 4, is this the usual way that shares are held in connection with Crown corporations, that is, in trust by the Minister of Finance?—A. I do not know.

Q. I am just wondering and not trying to take a course in corporation law. I am wondering in fact whether this could be further delegated?

Mr. LANGLOIS: May I suggest that Mr. Driedger of the Department of Justice answer this question.

Mr. E. A. DRIEDGER, Q.C., (*Assistant Deputy Minister of Justice*): All I can say is that very few so called Crown corporations are share corporations. So far as I can recall usually provision is made for some minister holding them in trust for Her Majesty, but not necessarily the Minister of Finance.

Mr. HAMILTON (*York West*): Have you actually considered the fact that if the minister is in fact delegated himself, can it be further delegated to him in this manner?

Mr. DRIEDGER: I am sorry, I do not follow you. If parliament says the shares are to be issued to a minister and held by him in trust for the Crown, I do not think the question of delegation arises.

The CHAIRMAN: Shall clause 4 carry?

Carried.

Clause 5?

Carried.

Clause 6.

By Mr. Fulton:

Q. On clause 6, Mr. Chairman, I do not know whether Mr. MacMillan or the minister would be the proper person to discuss this. There have been suggestions from time to time that the Board of Directors of the National Company should be enlarged. It is confined here to seven directors, all to be appointed by the Governor in Council. I am just wondering what is the attitude of the government to the suggestion that the board should be enlarged in order to provide among other things to bring into the operation and direction of the company the benefit of a wider experience which would naturally fall if you chose ten, say, instead of seven, well qualified persons, and secondly, to give to the Board of Directors a more complete geographical distribution across Canada. Now, I realize that in the case of Boards of Directors it is the desire to keep them within bounds. The number ten occurs to me as equivalent to the number of provinces in Canada. What is the attitude of the government to that suggestion?

Hon. Mr. MARLER: As I think I stated in the House at an earlier stage on the legislation, I fully appreciate that there are advantages which would accrue from having a larger board than seven, just as in the case of other large commercial corporations there are some advantages in having a large number of directors who, let us say, attract business to the enterprise which they are directing. But I think at the same time one has to be conscious of the fact that, when you increase the number of directors on the board, you at the same time diminish the responsibility of each. I am inclined to think, without having participated in the discussions when the number was originally set at seven, that that number was chosen because it represented a reasonable balance between having a very small and overpowerful board and the other extreme of having a very large board where the directors themselves would not feel, due to their number, that each had a high degree of responsibility. As I promised Mr. Macdonnell in the discussion on the resolution I am personally prepared to give further consideration to the subject of enlarging the board but I should say that it will not be possible to come to any conclusion in time to take action with respect to this question at this session of parliament.

Mr. NESBITT: On subclause 5 what is the purpose of having subclause 5 in there at all?

The WITNESS: Only because it is carried forward from the original Act of 1919. We have tried to keep this as a consolidation, and it is difficult to explain which are additions and which subtractions. It is just what it was always.

Mr. HAMILTON (*York West*): Mr. Chairman, in connection with Mr. Fulton's remarks on clause 6, has any thought been given to re-election or re-appointment of these directors on an annual basis? I think this clause may be fairly well in line with the provisions of the Dominion Companies Act, but in by far the vast majority of operating companies the directors' term of office is one year and they must be re-elected at the end of that time. That is one observation I would like to make on this. It may be that I will have the same answer as Mr. Fulton but I think very serious thought should be given to that if there is going to be an increase in the directors which I will strongly sup-

port. Unless there is some overriding legislation of some kind in connection with Crown companies, of which I am not aware, I am loath to see a situation here where people other than Canadians may be directors of this company, and I see no restriction in clause 6 that would restrict in any way the appointment of directors to Canadian citizens, and I would strongly suggest that that should be in the clause. Perhaps it is intended to appoint Conrad Hilton to the board, I am not sure.

The CHAIRMAN: Shall clause 6 carry?

Carried.

By Mr. Campbell:

Q. In respect of clause 7, subclause 1, is the chairman of the board appointed for life?—A. For three years.

By Mr. Hamilton (York West):

Q. Is there any legislation of which the chairman or the minister is aware which would restrict the appointment of directors of this company to Canadian citizens?—A. Not that I know of.

Q. Is there any objection on the part of Mr. MacMillian, or those representing the company, to a restriction of that type? Would it create any inconvenience in connection with the operation of those companies which are in the United States—those subsidiaries which may—I do not know—have members of the board who are Americans? Would it inconvenience in any way the operations of the company if that restriction were placed in the clause?—A. If I might, I would like to make this observation. There is no restriction against it in this legislation to my knowledge, and I speak with reasonable assurance of being correct, there has never been anyone on the board other than a Canadian. The appointments are all made by the Governor in Council. We have extensive international interests and I rather think it is probably below the dignity of this country to make a prohibition of this kind.

Q. I do not think so.—A. If we had the situation in reverse, we would have a very highly embarrassing condition with which to contend. The American subsidiaries all have board of directors. In so far as it is possible we try to choose people representative of the community through which the lines travel, but we always have our own people there too. If there were a restriction against anyone in the state of X, Y or Z, the Canadian National management would be in a difficult position, and the control, after all, is exercised by the government. There is no practical problem that I see.

Q. But in fact in the American jurisdiction you are faced with company restrictions there which necessitate Americans being on the board, is that not correct?—A. I do not know about that, and I will not say you are right or wrong because I do not know the answer.

The CHAIRMAN: Clause 7?

By Mr. Nesbitt:

Q. In clause 7 (1), "Subject to the approval of the Governor in Council, the directors shall appoint a President of the National Company" and so on. Then it says in subclause 1, "the President holds office during the pleasure of the directors". Could the Governor in Council prevent or veto the removal of the president of the board of directors?—A. No, I do not think he could, legally.

The CHAIRMAN: Shall clause 7 carry?

By Mr. Green:

Q. Why is a distinction made? As I read clauses 6 and 7, I observe that the chairman of the board is appointed by the Governor in Council. Apparently the directors have no authority regarding that appointment. However, under clause 7, the president is appointed by the board. Why is there a difference in the two positions?—A. The scheme of this legislation originated in 1933 at which time the board of directors were discharged and three trustees were appointed. They were appointed by the government and the chairman of the three was designated by the government. During that time the Canadian National continued to have a president but he was not a director, because there were no directors, and he functioned more or less as an entity under the three trustees. With the revision of the legislation to a large extent words were merely changed, and we still have the pattern in the legislation as it exists today of the chairman of the board being appointed by the Governor in Council, but the president of the company need not be a director of the company at all, although by statute he is permitted so to be. It is really the scheme of 1933 carried forward through the statute, and also 1936.

By Mr. Hamilton (York West):

Q. In connection with that clause, is that not an unusual arrangement that the president of the company need not be a director of the company? That is surely not in keeping with federal legislation or with provincial legislation.—A. That may be, but of course you have to read this in the light of the other clauses. The president is determined by statute to be the chief executive officer of the company. Obviously it would be impossible for the board of directors to operate effectively without the president being there.

Q. We have now had two clauses, Mr. MacMillan, in which we have said it is obvious that this is the only way that the company could operate, but we are not providing for it in the statute.—A. What we are trying to do, Mr. Hamilton, is to achieve a consolidation. This is exactly the law as it stands today, and as I have said before, we have not tried to change it. We want to put it all together. This language is exactly the language of section 10, subsection 1 of the C.N. and C.P. Act, and subsection 2 of the same section.

By Mr. Green:

Q. The language has been cut down?—A. Yes, and also rewritten. It is just a rewrite of the powers contained in those other sections. There is no change intended.

Mr. HAMILTON (*York West*): I do not want to labour this point much further, but surely when we are approaching this on the basis of a consolidation, which I think should always entail simplification, we should not have passed those last two clauses I mentioned simply on the basis of your statement that that is the way the company is operated. I cannot see an effective operation of a company with a president who is not a director, and this clause indicates that the president need not be a director; and I go one step further, as I said when speaking to the last clause, he need not even be a Canadian.

Mr. GREEN: I would like to ask the minister about that point. Would there be any serious objection to taking out that provision in clause 7 (1), "or a person other than one of the directors"?

Hon. Mr. MARLER: Personally I cannot see any particular reason for making a change. Mr. Hamilton a moment ago referred to the fact that the president might not be a director. I do not see what difference it makes. We know he is a director. I think the important thing is, have the directors access to his advice and counsel or not, and I do not think it makes any difference whether he votes, which is one thing he would do if he were a director, but

which he does not do as president. I think in this particular context that naming him the president may not be entrusting him with the role that is usually carried out by the president of a commercial corporation, but there is no doubt, when you read the statute, just exactly what he is intended to do. We say specifically that he is the chief executive officer of the railway. I do not think it is necessary to go any further than that.

Mr. HAMILTON (*York West*): Is that not a contradiction of what has already been said? It is intended here that he would be the chief executive officer and in connection with the operation of this company surely corporate practice as set out in the Companies Act of this parliament and the Companies Acts of the various provinces which makes it mandatory for the president of the company to be a director—surely there must be some reason for that type of legislation. It seems to me that it leaves it wide open as to who may be the president of this company. I would suggest that if the purpose has been to consolidate, we might attempt to simplify at the same time.

Mr. CARRICK: May I ask the honourable member what harm he thinks there is in leaving this as it is? Perhaps Mr. Hamilton could tell us the harm he sees in it.

Mr. HAMILTON (*York West*): The only harm I see is that if the man is going to be an adequately effective member of the company as president he must be a member of the Board of Directors and take part in their discussions. If not, he is going to be an appointee to whom this country will pay a salary not to do a job.

Mr. NESBITT: In subclause (1) starting at "who may be the Chairman of the Board of Directors or a person other than one of the directors".
Why not leave that out and have it read:

"subject to the approval of the Governor in Council, the directors shall appoint as president of the National Company a person other than one of the directors; the president holds office during the pleasure of the directors." That would be leaving out that centre part of the subclause which says:

"who may be the Chairman of the Board of Directors."

The WITNESS: Of course the drafting is the product of an individual's mind. There are as many ways of expressing it as there are different individuals. The thought we have tried to carry forward here is the contents of the statutes which are going to be repealed. Nothing more nor less. All those points are in the previous statutes.

Mr. NESBITT: If it is left out he can appoint anyone.

Hon. Mr. MARLER: I do not say that I do not agree with you but I think we should keep it as it is.

The CHAIRMAN: Shall clause 7 carry?

By Mr. Nesbitt:

Q. It says, in the subclause 7(2):

> The President of the National Company is the Chief Executive Officer of National Railways with such powers, authorities and duties as may be defined by by-law or resolution of the directors, approved of by the Governor in Council.

Are there any special by-laws in existence at the present time?—A. By-laws of the Canadian National?

Q. Yes.—A. Yes, of course.

Q. Giving the powers of the president? Could we have a schedule of those by-laws brought in at a further meeting?—A. I do not know exactly what it is in which you are interested. There is no change here. This is the law as it is today, and it is merely a rewriting of the present Act.

Q. I would like to have an idea as to what powers the president has.

Hon. Mr. MARLER: I do not really think this is pertinent to the legislation. I think the pertinent question is whether the powers and duties should be defined by by-law or resolution. All we are doing is presenting the legislation adopted in 1923 and unless there is some reason for changing it, I think we should leave it as it is.

The CHAIRMAN: Shall clause 7 carry?

Carried.

On clause 8.

It being 1.00 o'clock we will adjourn until 3.30 p.m.

AFTERNOON SITTING

The CHAIRMAN: Order, gentlemen.

Mr. N. J. MacMillan, Q.C., Vice President and General Counsel, Canadian National Railways, recalled:

The CHAIRMAN: When we adjourned at 1.00 o'clock we were on clause 8. Are there any questions on clause 8?

Carried.

Clause 9.

By Mr. Fulton:

Q. Will Mr. MacMillan give us the historic background of that provision of subclause 1 (a), which relieves the director of personal responsibility for his absence as director.—A. That was in the original charter of the original Act of incorporation and is carried forward in that form.

Q. Can you give us any idea why it was done? I can understand in so far as the shareholders are concerned because of the peculiar nature of corporate holdings.—A. I do not know exactly what the thinking behind it was but I would speculate it was because these people were appointees of the government; they were not representing any investment of their own. There was no equity flowing through them; they were merely there as the nominees of the Crown and as such it probably was felt they should not carry the normal responsibilities of a director. Directors as you well know are usually responsible for the wages in a company, but in a case of this kind such an obligation would not be too realistic, I should think.

Q. That might be saddling them with all the obligations and would not be proper, but is it going to the other extreme to relieve them of all liability. Has any thought been given to finding a middle path?—A. We have merely carried forward the provision which was originally in the statute.

Q. Well then, perhaps to throw a light on this, I might ask a question in general terms, and I will be satisfied with a simple answer, as to whether the remuneration of the directors is to pay them for their services as directors or

simply to reimburse them for their expenses in attending a meeting? If the latter, I might be prepared to accept the complete elimination of liability. But if it were the former, that they were paid as directors, I might urge that there be some revision of that complete elimination of their liability. I am not asking for any figures.

Hon. Mr. MARLER: The amount has been mentioned in parliament. It is an annual amount.

Mr. FULTON: Does it, in your estimation, take in anything over and above a straight reimbursement for their time which they devote from their ordinary business to being directors of this company?

Hon. Mr. MARLER: That would be a rather difficult point on which to express an opinion, I think.

Mr. HAMILTON (*York West*): Are the directors employees?

Hon. Mr. MARLER: No. They are not employees of the company.

The WITNESS: I think there are two exceptions, Mr. Gordon, and Mr. Daly who was either a conductor or an engine driver and who has been a member of the board for many many years; he is not now in action at all as an employee.

By Mr. Fulton:

Q. Who are the other directors?

Mr. LANGLOIS (*Gaspé*): It will be in a report.

By Mr. Green:

Q. Under clause 1 (b) there is a provision that:

> except with the approval of the Governor in Council, subject to any pecuniary penalty under any statute.

Has there been any order in council passed on that?—A. I have no recollection of that ever being utilized at all.

Q. It seems to be a peculiar condition. —A. I agree, but it has never been used in my time.

The CHAIRMAN: Shall clause 9 carry?

Carried.

Clause 10.

The WITNESS: If I might say a word in explanation of this clause—this is a collection of powers which appeared previously in different statutes. They all deal with the same subject and we have put them altogether and tried to codify them for a better understanding. There is one very minor change and it appears in (5):

"If the Chairman of the Board of Directors is absent", and this is followed in the former statute with "if the Chairman of the Board of Directors was out of Canada". Frankly the legal people did not know why that peculiar restriction was in it. If the chairman is not at the meeting then of course there is need of a chairman and it did not seem reasonable that he should have to be outside of Canada to allow an acting chairman to be appointed. That is the only change in clause 10.

Mr. HAMILTON (*York West*): The only observation I would like to make there is tied with the experiences we have noticed in connection with the actual number of directors. That, of course, is that four directors constitute

a quorum. In subclause (6) it even indicates that the bylaws of the company may be carried forward by an executive committee which I assume will be less in number than seven. All told it would appear that the total power in this company is constituted in the very small group. I am not suggesting that the quorum should be any different so long as the number of directors remains the same, but, along with our recommendation that we feel that the board of directors should be enlarged, I think it would also be in keeping that the quorum should be enlarged. Now, unless there is something in this Act I have not noticed, subclause (4) would indicate that a vacancy does not impair the directors' power to act and, looking back at clause 6 which deals with the appointment of the directors, it would appear that they might act for some period as long as they have had four people as directors, because that would be sufficient to constitute a quorum. Now, with the company having fixed investments and assets of almost three billion dollars, I question very much whether it should be controlled by an executive committee of that size.

The CHAIRMAN: Shall clause 10 carry?

Carried.

Clause 11.

By Mr. Green:

Q. Could we have an explanation of subclauses (2) and (3) of clause 11? They evidently are new.—A. Those notes on the right side are a little misleading. The only new portion of clause 11 is the words "officers or employees", where they appear in line 6. The whole of that line is: "the directors, officers or employees of the National Company." The only addition is the three words "officers or employees". The reason for it is we do have, as we mentioned this morning, properties which are owned jointly by the Canadian Pacific and the Canadian National. Examples are the Northern Alberta Railways and the Toronto Terminal Railway Company and two or three other smaller ones. These are properties which have a separate corporate existence but which are in actual fact merely operating entities of the railway. They have their own officers limited to a superintendent, or someone of another title doing the function of a superintendent. The superintendent reports to a joint operating committee consisting of the operating officers of board of the C.N. and C.P. Now, to fulfil the corporate means of a company there must be a board of directors. The Canadian Pacific's policy has been to appoint to that board, not directors of the Canadian Pacific Railway Company, but operating officers who are concerned with it.

That is all we seek to do. We wish to be able to match them off, in other words. For example, the Northern Alberta Railways, by virtue of the old statute had to designate Canadian National directors on the seven-man board. The Canadian Pacific on the other hand designated a vice-president and other operating officials from their other lines, and we wish to do the same thing on the jointly owned properties. That is all it is.

The CHAIRMAN: Shall clause 11 carry?

Mr. GREEN: Then why is it in subclause (3)? Is it because you do not include the directors there, but only refer to officers or employees?

The WITNESS: This subclause 11 (3) was added merely to extend those corporate or company officers, including these partially control directorships, to be in the same position as the other men are put into by virtue of the other clause.

Hon. Mr. MARLER: It is a parallel provision.

The WITNESS: Exactly.

The CHAIRMAN: Shall clause 11 carry?

Carried.

Shall clause 12 carry?

Carried

Shall clause 13 carry?

Carried.

On clause 14.

Mr. NESBITT: "The Governor in Council may change to any other name the name of any company comprised in Canadian National Railways, or of any other company of which the properties or the controlling interest in the stock is vested in or held by Her Majesty." The word "control" again means the ownership?

The WITNESS: I think it does.

The CHAIRMAN: Shall clause 14 carry?

Carried.

On clause 15.

By Mr. Green:

Q. This is the one which refers to the Government Railways Act. The side note says that it replaces section 15 of the C.N.R. Act, but that section 15 does not refer to sections of the Railway Act?—A. Might I explain that. Section 15 of the original statute provided that: "Notwithstanding anything in the Government Railways Act or any other Act the provision of the Railway Act respecting the construction, maintenance and operation of a railway, (excepting those relating to the location of lines of railway, the making and filing of plans and profiles—other than highway and railway crossing plans—and the taking and using of lands and expropriation proceedings) apply to any Canadian Government Railway that would, but for the passing of this Act, be subject to the Government Railways Act." We have felt in the drafting of this legislation that it is highly desirable to remove ambiguities and uncertainties and so, rather than use this generally vague language, we have switched the Railway Act and decided that the provisions referred to in the old section 15 are those provisions contained in sections 169 to 246 of the Railway Act, so there is no uncertainty. That is the only change.

Q. Take for example, section 169 of the Railway Act which is entitled "Commencement of Works":

> The company shall not, except as in this Act otherwise provided, commence the construction of the railway, or any section or portion thereof, until the general location has been approved by the board as hereinafter provided, nor until the plan, profile and book of reference have been sanctioned by and deposited with the board and duly certified copies thereof deposited with the registrars of deeds, in accordance with the provisions of this Act.

Then there follows another heading, "Location of Line". Turning to section 15 of the Canadian National Railway Act we find there that the section starts with those provisions related to construction of lines of railway; then it goes on:

> the making and filing of plans and profiles—

and so on. So it would appear that you have gone one step further and taken out the provision of 169 in so far as these Canadian government railways are concerned, which would mean that they do not have to apply to the board

under 169. In other words, you seem to have widened out your section to take in more territory than was taken in by section 15 of the Canadian National National Railways Act?—A. I can assure you that was not the intention. The best opinion on this subject has always been that section 169 and what is now 246 were not applicable to the Canadian government railways because there are provisions in the Canadian Government Railways Act which do the same thing and provide different machinery under which construction by the minister is to be undertaken. We have not intended to increase the deletion at all. We have just made an earnest attempt to translate into actual facts this generally vague language which appears in the old section 15, because it is not desirable.

The discussion you and I are having is the best evidence of it. The only way to achieve certainly of the intent is to put it in. These have been studied and the conclusion reached is that the beginning is at 169, and that the end is at 246. You will remember always that here we are talking about the provisions of the Railway Act as applying to Canadian Government railways. The situation is not identically the same when we get to the Canadian National Railway Company which is in the next section. I will show you the difference.

Q. In other words, the practice has been that in the case of the Canadian government railways you have never been subject to section 169 of the Railway Act?—A. We do not utilize these powers at all when you get to the Canadian Government railway at least, not to my personal knowledge. These are powers to the minister, not to the railway; they are powers to the minister to build.

Q. In the case of government railways?—A. Exactly.

Q. And those powers will remain with the minister?—A. Yes. They are the minister's; they are not the railway's.

The CHAIRMAN: Shall clause 15 carry?

Carried.

Clause 16.

Mr. NOWLAN: What are those exception in clause 16?

The WITNESS: I was going to ask for the opportunity of explaining this clause and I wish to make a little change here. The new clause 16 stands in lieu of section 16 (1) of the old statute. There you will see that there are exceptions from the applicability of the provisions of the Railway Act numbered a, b, c, and those are all in general terms. Section 16 (a) is:

> such provisions as are inconsistent with the provisions of this Act.

That is a very difficult phrase to operate under. (b) is:

> the provisions relating to the location of lines of railway and the making and filing of plans and profiles, other than highway and railway crossing plans.

That is a little better, but it is still far from satisfactory. Then, (c):

> Such provisions as are inconsistent with the provisions of the Expropriation Act as made applicable to the company by this Act.

Now we consider that the three subsections just read, expressed in specific sections of the Railway Act, are those contained in subsection (a) of clause 16 in the bill. The change is as it might appear in line 11 where we say: "sections 197 to 205." Those sections deal with the question of mineral rights under lines of railway, and since the drafting of the bill the question of

whether section 198 is applicable to the Canadian railways has been the subject of litigation in western Canada, and it is likely to be the subject of a reference to the court of appeal. I would like to change "197" where it appears to "202" so that we are not specifically excluding sections 197, 198, 199, 200, and 201. The reason being that I would not like to take this avenue of avoiding the consequences of litigation which have come along, although it would be a very happy result. There is no danger in it from our point of view, because if the court of appeal finds it is poor law or not applicable we get out under subsection (b). You will notice in subsection (b), for the sake of greater safety, we have carried forward:

> such other provisions as are inconsistent with this Act or the Expropriation Act as made applicable to the National Company by this Act.

because we do not regard ourselves as infallible, and we may have missed something.

By Mr. Green:

Q. Why do you ask exemptions from these sections 202 to 205? Those are sections which define the power of the railways to take lands without the consent of the owner.—A. Because we do not have that power. We do not have the power to expropriate under the Railway Act.

Q. You are asking to have this taken right out?—A. No; what I am doing is translating in this specific clause the significance of the language of the section of 1919, that is all. We are not asking for the extension of any powers or the restriction of any; but to get rid rather of the uncertainty of this present vague language we put in specific section numbers, attempting to the best of our ability to do that and maintain the *status quo* exactly, not increasing or restricting the exemption.

Q. You are now asking to be exempted from the provisions of the Railway Act having to do with branch lines. Have you never been subject to those provisions?—A. No. We do not build under those provisions. These powers were never granted to the Canadian National, the powers dealing with the location of lines, the construction and so on; that was not the concept of the Canadian National at the beginning at all. The concept was that it was a creature of parliament and was to come under parliament when it sought things. All its powers flowed from parliament. The reason is perfectly obvious here was something which would come into the possession of Canada. The former railways had come from a jurisdiction presided over by the board. It was an extraordinary remedy which was being applied, they were being put together in a unit into one, and the people who were going to put it together, I take it, wished to retain complete control of its avenues, then and for the future. Consequently when they passed the Canadian National Act of 1919 all of these powers to which you are now referring were not made applicable to the Canadian National at all. There were other provisions inserted in the statutes to do the same thing.

Q. Under what section would you have power to build branch lines?—A. They are very limited in section 20. It is because of the limitation on the branch line powers that the Canadian National comes back to parliament, year after year, with special bills empowering it to build such lines of railway.

Q. Then under the Railway Act there is a provision in section 188 for the building of industrial spurs and there is power there to force the railway to put in an industrial spur?—A. Yes.

Q. Apparently you were exempted from that before?—A. It does not apply to the C.N.R.

Q. Is a similar regulation binding the C.N.R.?—A. No. You mean is there any section comparable to 188 which is applicable to the C.N.R.?

Q. Yes.—A. No, not to my knowledge.

Q. As I read 188 there is provision for industry rather than for the railway.

Hon. Mr. MARLER: Yes.

By Mr. Green:

Q. The C.N.R. is not subject to any such provision?—A. That is right, but I can assure you that if the machinery contemplated in sections 188 and 189 would be put into motion I think any railway in Canada would be happy to do the construction, because those are industrial lines and the industry is called upon to put the money on the barrel-head before the construction commences, and the railway, by order of the board or by special arrangement, commits itself to rebate in some pre-determined manner at the rate of $2, $3 or $4 per carload of traffic on the spur, or in some means, under which the industry gets its money back again if and when traffic materializes. I do not think a railway can lose in such a situation.

Q. And industry could compel the C.P.R. to put an industrial spur under this section 188 of the Railway Act, could it not?

Hon. Mr. MARLER: You will remember, under the Act the owner has to deposit the cost of the work.

By Mr. Green:

Q. But there is a difference apparently there, that an industry can compel the C.P.R. or any one railway, except the C.N.R., to put in a spur. Apparently it cannot compel the C.N.R. to do that? Is not that different?—A. I think that is right. I do not wish to describe the powers and rights and privileges of the Canadian Pacific, but I think the intent of the section is quite clear.

Q. There is also the power in section 190 of the Railway Act in the Board of Transport Commissioners to prevent the removal of a spur?—A. Yes.

Q. Is the C.N.R. subject to a provision of that kind?—A. The C.N.R. is subject to those provisions under which none of its trackage may be abandoned without the concurrence of the board.

Q. When was that written into the law governing the C.N.R.?—A. The Canadian National Act, section 22 (1). The section is in the C.N.-C.P. Act, section 2 (3). We are also subject to the provisions of section 168 of the Railway Act itself which provides that no abandonment shall take place without the approval of the board. There are three restraining sections.

The CHAIRMAN: Shall clause 16 carry?

Hon. Mr. MARLER: Note the amendment changing the figure "197" to "202", in the fourth line of clause 16.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall clause 16 carry as amended?

Carried.

Clause 17.

The WITNESS: This is a complete rewriting of section 16, subsections 2 and 3, of the present Canadian National Railway Act.

By Mr. Green:

Q. Could we have a brief explanation of the difference in power of expropriation held by the Canadian National and by the C.P.R.?—A. I am

quite willing and able to tell you the power of the Canadian National. It is hardly fair for you to ask me to tell you the powers of the Canadian Pacific; I am no authority on that. They have powers and procedures with which I am, frankly and honestly, not familiar.

Q. You would be familiar with its powers of expropriation contained in the Railway Act itself? How do those powers compare with the powers which will be in this new clause 17?—A. Well, the powers that will be here, I would like to say, in the first place, are exactly the same powers that have always been here. There is no change made in them at all. This is the power under which we have operated for 36 years. The machinery of course is that we take under the authority of the Federal Expropriation Act. The first requisite is the dollars; the dollars properly authorized must be present, and having done that, then we take, in the same manner as any department of government does, the power under the Railway Act. I must not pass here without saying that the powers of expropriation are very seldom utilized to compel sales. The powers of expropriation are normally only utilized with the full concurrence of the owner to clear flaws in titles and provide a means by which conveyances can follow in the filing of plans. I doubt if we have one case a year in which we take title under expropriation at all. It is always just a means of clearing up mechanical difficulties.

Q. How do these powers compare with the powers of expropriation as set out in the Railway Act itself?—A. I would have to look that up, Mr. Green.

Q. It has been my understanding that the C.N.R. has much wider power of expropriation than another railway would have under the Railway Act. I may be wrong on that.

Hon. Mr. MARLER: I think you are right in that. It has been represented to me that the principal difference—and I want to say to the committee that I have not verified this assertion—is that the Expropriation Act used by the Canadian National provides for immediate possession upon depositing the plan; whereas I understand the situation under the Railway Act, is that the railway, and specifically the Canadian Pacific, has not the right to take immediate possession.

By Mr. Johnston (Bow River):

Q. Will they be coming back and asking for similar powers?

Hon. Mr. MARLER: I cannot read the future.

Mr. CAVERS: Do you feel that the deposit of the plan is sufficient notice?

The WITNESS: I do not think we ever just deposit plans. We always append a description.

Mr. CAVERS: The section says a description is not necessary?

The WITNESS: Yes, but we do in those cases in which we find we have to use this procedure we cannot get a proper plan without a surveyor having determined on the description, and the description is filed. I remind you of what we said a moment ago. We do not feel we should utilize these expropriation powers in a heavy handed manner at all. We do not do that; we go to the people and talk it over. In the vast majority of cases there is no question as to the conveyance flowing in due time. We often find a cloud on the title through mistakes and lack of definite surveys in the early days, and with the consent and full knowledge of the owner we file a plan and do it with the provincial governments.

By Mr. Green:

Q. If you follow up that practice why should your powers of expropriations not be the same as the powers of the other railway companies? That

is, why is it that the C.N.R. does not expropriate under the provisions of the Railway Act?—A. Because the government many, many years ago decided that it was not their concept of what the Canadian National was to be. They went to great lengths to safeguard it against being a company subject in all respects to the Railway Act. They had reasons; what they were, I do not know. But they provided a different code for the Canadian National. We are not advocating any change; we are not saying it is better than the C.P.R.'s, or worse than theirs. This is the skeleton on which the Canadian National has been created. We know this animal; all we are trying to do is to carry on in a manner which we know.

By Mr. Hamilton (York West):

Q. Is that service of notice ordinarily a matter of policy or is there a provision?—A. There was no provision in the statute requiring the serving of a notice, but we do send one just because it is good public relations.

By Mr. Green:

Q. This clause 17 gives the Canadian National Railway Company special powers of expropriation. What about the Canadian government railways? Do they come under this clause 17?—A. No, no.

Q. When you are dealing with Intercolonial, do you in effect have the full Dominion power of expropriation?—A. The Canadian government railways are governed by the Government Railways Act. The affairs of the Intercolonial are pursuant to that Act in so far as they are preserved. I must tell you, as I read the situation of the maritimes, that is the way the people of the maritimes want it; they want it under this government railways legislation.

Q. I am asking you now about the powers of expropriation. What are these powers in the case of Canadian government railways as distinguished from Canadian National Railways?—A. Canadian government railways undoubtedly possess expropriation powers under the same legislation in the Expropriation Act of Canada because it is the only federal statute which I have known of which permits compulsory taking for any arm of the Crown. It seems to flow from that, that the Canadian government properties would take under that statute.

Q. Then the powers of expropriation in respect of the Canadian government railways are wider than the expropriation powers of the Canadian National Railway Company?—A. I do not know exactly what you are trying to get at; if I did I would try to help you. The same statute which is applicable in both cases.

Q. You have in your system these two groups of railways, one the Canadian government railways such as the Intercolonial, the Hudson Bay and the Newfoundland Railways, and then the others, the main bulk of the railway system, called the Canadian National Railway Company. Is there any difference between the expropriation powers of those two groups?—A. There is this fundamental difference. The powers for the Canadian government railways in expropriation are the powers of the minister of the Crown; the Canadian National powers are the same pursuant to the same statute but not exercised as the minister of the Crown but exercised as Canadian National Railway Company under this legislation.

Q. What is the difference in the actual powers in the two cases? I realize in the case of the Canadian government railways there is the power of expropriation just as broad as in the Department of Public Works?—A. Academically the same power.

Q. Are the powers of the Canadian National Railway Company any less, and, if so, to what extent?—A. It is difficult to say whether they are less or

not, because they are not the same; they are different. The powers of the Canadian National to do anything must be found within the statute. If we have powers as recorded in the statute then it says we need resort to the Expropriation Act. The Expropriation Act, on the other hand, confers on the Queen the right to expropriate for a public work. In a public work, as I remember, the right is defined as a work which, in effect, has been the subject of an estimate, so that in the one instance parliament must have deliberated on the question in the approval of the estimate to bring the powers of the expropriation into play; I think this is the way it works. We do not work under that procedure at all. That, I take it, would be a relatively simple bit of machinery. The Canadian National, on the other hand, starts at a different point. We start again with parliament because it is only from parliament that we get our dollars. I hope I have resolved your difficulty.

Q. You are giving the origin for at least the provision made for the expenditure of the money, but in the actual expropriation is there any actual difference between the powers which can be used in the case of a Canadian government railway, and the powers which can be used by the Canadian National Railway Company?—A. I am not trying to avoid your question. I frankly do not know the answer. I would expect that for all practical purposes they would be the same.

Q. For all practical purposes the Canadian National Railway Company has the powers of the government itself in so far as expropriation is concerned? —A. No, they do not have. They have the same procedure as provided for the government, but the machinery required has a condition precedent in the case of the Canadian National and is not the same nor as simple as in the case of the Crown. That is what I attempted to explain to you a little while ago. You know all the conditions precedent which have been made the way parliament works under the same statute; the mechanics are the same.

The CHAIRMAN: Shall clause 17 carry?

Mr. CARRICK: Have you had any complaint about the exercise of these powers as now in the Act.

The WITNESS: No. There have been very, very few.

The CHAIRMAN: Shall clause 17 carry?

Carried.

As the reporter has been kept pretty busy I think we should have a recess for a few minutes.

Hon. Mr. MARLER: I wonder, if before the recess, I might give to the members of the committee copies of a proposed amendment to clause 18 which will give everybody an opportunity to read it during the recess.

The CHAIRMAN: Following the recess, we are on clause 18.

Mr. LANGLOIS (*Gaspe*): I have a suggestion to offer to the committee. In order to avoid duplication of the discussion and of the evidence which the committee might wish to hear, may I suggest that we deal with clauses 18 and 27, since these two clauses are closely related one to the other, leaving the intervening clauses to stand.

Agreed.

Mr. FULTON: Are we to hear the evidence of those who are here?

Mr. LANGLOIS (*Gaspe*): There are two amendments to clauses 18 and 27 respectively which I am prepared to move now, and I understand that the minister has an explanatory statement to make after these amendments have been placed before the committee.

Mr. Chairman, I move, seconded by Mr. Cavers, that clause 18 be amended by adding thereto the following subclause:

(4) For the purposes of this section, the expression "works" and "railway or other transportation works" do not include

(*a*) any works operated under the authority of section 27, and

(*b*) the works of any company mentioned in part III of the First Schedule.

I also move that clause 27 be deleted and that there be substituted therefor the following:

27. The National Company and every other railway company comprised in National Railways, may, in conjunction with or substitution for the rail services under their management or control, buy, sell, lease or operate motor vehicles of all kinds for the carriage of traffic.

Hon. Mr. MARLER: Mr. Chairman, the first point I would like to mention is, as I said when I proposed the second reading of the bill in the House last week, that we wish to except from this declaration as being works for the general advantage of Canada the works of any company mentioned in part III of the First Schedule. Among the companies mentioned in part III, I said in the House the other day, is Canadian National Transportation, Limited. Of course, the other companies are those the names of which will be found by referring to part III of the First Schedule.

The reason for the amendment is that the works of these companies, many of which are not even established in Canada, would not be declared to be works for the general advantage of Canada.

Then, in order to carry out what I said to the House the other day in respect to operations, the declaration has been further restricted so as to exclude any operations under the authority of clause 27. The purpose of the amendment in the terms which are now before the committee is to make it abundantly clear that the powers which the national company and every other railway company will obtain under clause 27 will be exercised in conformity with the laws of the provinces.

When I first thought about the matter my inclination was to believe that we should have specific words referring to provincial jurisdiction appear somewhere or other in the text, but when I went into the matter, and when the subject was explained to me fully, I realized that if we were to put it in one clause then the implication would be that in other clauses of the bill, where other powers are being given which have in some cases to be exercised, subject to provincial jurisdiction, we would seem to be creating a distinction between the two classes of powers. The legal advisers of the Department of Justice have told me that the powers under clause 27 can best be made subject to the authority of the province by excepting the works being carried out under clause 27 from the declaration "for the general advantage of Canada".

I hope I have made myself clear. As I said at the very beginning of consideration of this bill it is intended, and always has been intended, that the Canadian National Railways in its delivery and pickup services and in the establishment of truck or bus services in the case of the railway line abandonments would carry out its operations subject to such laws of the province as were applicable to those particular operations.

Mr. JOHNSTON *(Bow River)*: In the First Schedule on page 17 I notice there are several names mentioned, for instance, the first one is the Canadian National Express Company and then, later, the Canadian National Transfer

Company. Would it not be possible that those could be declared to be works for the general advantage of Canada, and that therefore they could carry on even if eliminated by part III?

Hon. Mr. MARLER: They are already subject to the declaration as being works for the general advantage of Canada and no change is being made in respect to them at all.

Mr. JOHNSTON *(Bow River):* But could that not work regardless of provincial legislation?

The WITNESS: They have no highway motor vehicle powers at all.

Mr. JOHNSTON *(Bow River):* Could they not extend it to include that?

The WITNESS: If they sought amendment to their charter, presumably.

Mr. JOHNSTON *(Bow River):* Would they have to seek amendment to the charter? If this bill is passed they could just go ahead and put their trucks on the highway?

Hon. Mr. MARLER: I think they can only do it if they have power under the charter. They are not getting power under this bill.

Mr. JOHNSTON *(Bow River):* I take it that the power they have under their general charter would not permit them under any circumstances to operate on the highways or to do other things contrary to provincial legislation?

The WITNESS: That is my understanding, yes. I point out to you that clause 27 is restricted to railway companies. Neither of the companies which you mentioned are railway companies; they get no powers under clause 27.

The CHAIRMAN: We have representatives of the Canadian Trucking Associations here now. Mr. William C. Norris is president and Mr. John Magee is the executive secretary. Mr. H. E. B. Coyne of Ottawa is their counsel; I would suggest that Mr. Coyne come forward.

Mr. NESBITT: There is one brief question I would like to ask the minister. This section 18 (1) is: "The railway or other transportation works of every company . . ." and so on. Does that mean that the term "other transportation" means works which are contributed in part by the railway? I mean, for example, grade crossings where the railway contribution is only a relatively small percentage?

The WITNESS: I think that the answer must be in the negative, because it goes on to say "of the railway" and I think that implies ownership.

By Mr. Hamilton (York West):

Q. Did we have a binding answer that no company under part I or Part II of the schedule has the power to operate vehicles of any kind on a public highway?—A. The first part of the answer has to be that clause 18 as written does nothing for those companies in parts I and II that it has not always possessed. There is no extension of the declaration by the proposed clause 18 to any company in this tabulation other than a couple to which I will refer that have not always had it.

The second thing is that to the best of my knowledge none of these companies in part I or II possesses highway motor vehicle powers at all; certainly they have never been utilized.

Q. Is there any special provision that it might be considered that they had ancillary highway powers, much the same as you obtain under the corporation Act type of corporation? Would there be a reasonable extension of their powers without coming back to parliament? That is what I mean. Are these companies purely incorporated under an Act of parliament?—A. Not all of them. The majority are.

Q. Would it be reasonable to say if they had obtained their powers under letters patent and not by statute that they might have ancillary powers to operate vehicles.—A. Not to the exclusion of provincial jurisdiction. I cannot see how that could be—no.

Q. If they come under clause 18, they would; and would they not be included in the phraseology?

By Mr. Johnston (Bow River):

Q. If they come under clause 18 they would be declared works for the general advantage of Canada, and then they would.—A. In the first place I think there are very serious doubts on the academic point as to whether a motor vehicle operation is a transportation work. Frankly that is not my concept of the significance of the declaration "for the general advantage of Canada" at all. I think the case law tends to the view that works are fixed physical developments. This bill is a "works" if you wish; but an automobile on a street at this street corner at this minute, and away down the street five minutes later, I doubt very much if it is a work within the intent of clause 18 or of any other declaration. It is opposed to the general basis of the whole problem.

Q. Now, are you suggesting then that we may be under an obligation to refer to some case law to decide that issue if this amendment goes through as it is?—A. No. I am not suggesting anything of the kind. What I said in the first place was that subclauses 1 and 2 of clause 18 do nothing that has not always existed.

If you will refer for a moment to the schedule I would like to point out to you those companies which have never been declared to be works "for the general advantage of Canada" and they are, I think, four in number. In the part I of the First Schedule there is the Dalhousie Navigation Company Limited; with that, Mr. Hamilton, you are very familiar. It was a lakeboat operation across Lake Ontario. The charter which was a letters patent charter is presently in the hands of the Secretary of State with an application for surrender; it is empty and the operation has gone. As soon as the machinery of the Department of State has turned, it will disappear.

Mr. HAMILTON (*York West*): You probably would like it back.

The WITNESS: I do not want it back. I have others. That is the only one on the first list which is not already declared just the way it is dealt with in clause 18. In part II of the First Schedule the second listed is the Canadian National Steamship Company Limited. We can find no specific declaration to cover that. That is a shipping company covered under the British North America Act and it is there anyway. The next is the Central Counties Railway Company, a very small segment of our line between Ottawa and Toronto. The company is completely dominant over the line under a perpetual lease. We do not find any declaration for it.

On the next page, page 18 of the bill, there is the Grand Trunk Pacific Railway Company, and we cannot find that it has ever been the subject of a specific declaration. Why it was overlooked I do not know unless it was so big and so important that they forgot it. Then there is the St. Clair Tunnel Company, and this, you may be interested to know, is a company resulting from the amalgamation, if it is legally possible, of an American and a Canadian company, two companies of the same mother company, making the tunnel going from north to south, originating in Ontario and terminating in the United States; there were two tunneling companies, one originating in the state of Michigan and the other in Canada. They were amalgamated and that company has never been declared. Every other company in parts I and II of the First

Schedule of the bill has previously been declared works for the general advantage of Canada. What we tried to do in clause 18 was to separate the context of the old section 7 of the C.N.-C.P. Act of 1933 and section 17 of the Canadian National Act of 1919, and in a language which was easily understood boil it down to that. Subsection (2) I should tell you in our view has no significance at all because you will notice that it is in respect of companies incorporated by the provinces. In 1933 the C.N.-C.P. Act incorporated all provincial companies in Canadian National Railways as dominion companies. Since that time there has not been a provincial incorporation by Canadian National. We would have left the provision out but it was there in the other legislation and has an historical advantage. That is its explanation. In so far as we are concerned I think it is totally ineffective because I do not know any company to which it would apply.

Mr. GREEN: Would it apply if you incorporated any new companies?

The WITNESS: I do not think it would.

Mr. JOHNSTON (*Bow River*): Do any of those companies mentioned in parts I and II operate to run buses?

The WITNESS: No; all the trucks or buses are operated under the name of the Canadian National Transportation Limited.

By Mr. Fulton:

Q. I would think that Mr. Johnston's concern would be in connection with the Canadian National Express. You operate trucks there at the present time for the purpose of delivering the express parcels and picking them up?—A. No, we do not.

Q. Do they not operate motor vehicles?—A. No.

Q. Does Canadian National Transportation operate the vehicles?—A. No. The Canadian National Railway Company conducts the express business. This is one of those points on which I spoke this morning where all of these companies had their appendages. The Canadian National Express at one time was the Canadian Northern Express Company. We must put a couple of others in there and have changed their name because we are trying to get rid of Canadian Northern as a name. It is a non-operating corporation. The express business of the Canadian National is conducted there but under the authority of the Canadian National Act.

Mr. MONTGOMERY: It is subject to the provincial laws at the present time?

The WITNESS: Yes. We have always abided by provincial laws.

Mr. HAMILTON: (*York West*): Notwithstanding what you told us about these companies, there is power there if you should want to exercise and make use of these charters, and I think I might differ with you on the meaning of subsection (2) of clause 18, on Mr. Green's question because I would be almost certain if a new company were incorporated in the future it could be construed to have the rights set out in clause 18 (2). The Act might not have retroactive effect, but certainly would have—

Mr. LANGLOIS (*Gaspe*): Would not these companies have these rights only if the provincial legislatures wish to give them corresponding corporate powers? They would be operating under provincial charters.

Mr. GREEN: Section (2) of 18 reads:

> The works of every company that is comprised in Canadian National Railways but is not incorporated by or under the laws of Canada are hereby declared to be works for the general advantage of Canada.

Now, if the railway company decide to incorporate a company under the Companies Act of the province of Ontario, it seems to me that the works of that company would automatically get the benefit of your subclause (2) and become works for the general advantage of Canada?

The WITNESS: That would not put it into the Canadian National Railways, and unless it is part of the Canadian National Railways it cannot even be argued that the statute speaks. We cannot go willy-nilly, and incorporate provincial companies and put them into the nest of what is Canadian National Railways. It requires further action. What is Canadian National Railways is determined by the statute. It is another of the things I mentioned before. Other railway companies probably could do that, but the Canadian National cannot.

Mr. JOHNSTON (*Bow River*): That is why I was so particular at the first about these definitions. When we see clause 18 (2) it says:

> The works of every company that is comprised in Canadian National Railways . . . . . .

which would mean a Canadian railway company. It would seem there that they could set up these companies and gain those extra powers which it is not the intention that they should do.

The WITNESS: Le me assure you, that is not possible. It is not what the statute says. It is not possible for the Canadian National of its own determination to create a company and have it become part of the Canadian National Railways.

Mr. HAMILTON (*York West*): Under clause 2 (c) (iii) it would appear that you could incorporate a provincial company and then have it declared by order of the Governor in Council to be part of the national system.

The WITNESS: Well, I do not think that it is quite as simple as that. That is one way by which it can be brought in other than coming back to parliament, but that is not something which is within the power of the Canadian National Railway Company. Under that section it is the Governor in Council, but not the company.

By Mr. Johnston (Bow River):

Q. It could be done without coming back to parliament to have it done? —A. Yes.

Q. Then you can, once the Act is passed, incorporate another company without coming back to parliament, solely by the powers which this bill gives you. Therefore, you could set up a company which could have all the rights and privileges given under this Act despite anything which is in provincial legislation.

Mr. GREEN: Under clause 14 (2) that expressed power is set out:

> The Governor in Council may declare any company in Canada that is directly or indirectly controlled by the National Company to be comprised in Canadian National Railways.

So you could incorporate an Ontario company and then, if the Governor in Council declared that to be part of the Canadian National Railways, it would automatically be in your system, would it not?

The WITNESS: Well, you have provided ways and means which are completely beyond my ken at the moment.

Mr. BARNETT: Perhaps we are opening up avenues to you which you never thought of.

The WITNESS: The interesting point is there is nothing intended to be concealed in this. We do not have any need for these powers. The desire to operate in opposition to provincial jurisdiction I have never heard expressed.

I think it would be poor business and very poor public relations to carry on an operation in that way. We have had trucks for many years and we have at all times accepted and complied with provincial jurisdiction; that is the policy of the company.

Now, in these last few minutes you have shown me an avenue which in your opinion will take us beyond the competency of a provincial tribunal. I do not accept it, but nevertheless it is a most ingenious stroke.

By Mr. Johnston (Bow River):

Q. Of course you must admit that it is not the case of whether the railway companies or the government has ever exercised the powers to do that which you say they had no intention of doing, but the actual fact is they could under the present legislation do that very thing. It is a very easy thing for the company to change its mind in a few months or years and say "I guess it is time to set up another trucking company", and they go back to the Act, look through the Act, and see that there is power and that they do not have to come to parliament; then they go ahead and do the very thing which we are trying to prevent.—A. You overlook that the railways themselves cannot do that.

Q. Who can?—A. The Governor in Council.

Q. The railway can come to the minister and say this is what we want to do, and the minister could say we can do that by order in council and they proceed to do it that way. In effect it is the same thing.

Hon. Mr. MARLER: I do not think that anyone is foolish enough to think we are not following intentions. We are dealing with a text of law and quite obviously we want the text to conform to our intentions.

Mr. FULTON: The board, as I understand it, is obliged to make certain legislation accomplish only what is desired.

Hon. Mr. MARLER: Quite.

Mr. FULTON: I wonder if Mr. MacMillan would consider whether it would embarrass you, either at the present or at the future, if we inserted in subclauses (1) and (2) of clause 18 the word "now". It would make it:

> every company that is now comprised in Canadian National Railways...

in both of those subclauses.

Mr. CARRICK: May I ask a question?

Mr. FULTON: I am sorry; the wording should be "as of the date of the passing of this Act".

Mr. NOWLAN: That would do it.

Mr. FULTON: That would not tie your hands too much, would it?

The WITNESS: No. My hands are quite unfettered. I think this is a question with which the Department of Justice would have to deal.

Mr. JOHNSTON (*Bow River*): In the meantime, could we not hear the presentation, Mr. Chairman, of which you spoke a moment ago?

Mr. CARRICK: I would like to ask a question first. I wonder if Mr. MacMillan could explain this: I know this is a difficult piece of draftsmanship but clause 18 with its amendments as suggested declares certain railways and works would be for the general advantage of Canada and that includes all the companies mentioned in the three parts of the First Schedule by definition. Then clause 27 as you have redrafted it gives those same companies the same power.

Hon. Mr. MARLER: Not the same companies; the national company.

Mr. CARRICK: The national company as defined which includes all companies in schedule (*a*). It gives those companies power to control motor vehicles. Now it seems to me that the amendment which says that clause 18 shall not apply to any works operated under clause 27 is the very widest language you could have, and that would automatically prevent any company included under the First Schedule from doing that very thing we want to prohibit. It seems, when you go on by this amendment and say it also includes the companies mentioned in part III of the First Schedule you are raising a question as to the status of the companies under parts I and II. It may be better to leave out the specific reference to part III. In other words, I think you have accomplished everything you want to accomplish by 4 (*a*) and you only weaken it by putting in 4 (*b*).

Hon. Mr. MARLER: I think the objection to that, offhand, is that if we strike out this subparagraph (*b*) then the Canadian National Transportation Limited is declared to a work for the general advantage of Canada.

Mr. CARRICK: Even so, by virtue of clause (*a*) it has no right to control, buy, sell or lease motor vehicles under clause 27.

Mr. FULTON: It has it under its charter and does not need clause 27 for its authority.

By Mr. Green:

Q. Is not that the root of the whole question? Why is it necessary for the railway company to take this power to operate motor vehicles? Why cannot that business be carried on as it is at present by the subsidiary company Canadian National Transportation Limited?—A. Well, the operations are entirely different. The power contained in clause 27 in the first place is restricted to railway companies. It is not intended to be a power comparable to the power which anybody can obtain by going to the Dominion Companies Act. There is a restricted power. When it was drafted we thought we were using restrictive language. It is merely part of the general housekeeping to put into this statute the things which this railway must do. The railway as such is a creature of parliament and then in its operations it must have motor vehicles. We have ambulances, and we have police cars; we have cars in the hands of the operations department, we have trucks and other types of motor vehicles. It can be well argued that we would not require the power at all to possess and utilize those vehicles. I think that it is a fact and that it is axiomatic that the company must use these things, but I think also it is desirable that what we do should be somewhere in this book, in the statute.

The providing of the cartage service which has been mentioned we think is part of the operation of the property. It has never been the subject of any action in the past; it is the beginning and/or the end of a rail movement; it is urban in character; and it is not that we are in doubt as to the power, but rather that the power should be spelled out. That is all that is intended in conjunction with the railway. It does not mean over-the-road highway operations because we do not do that. We have a company clothed with the authority it requires to do that type of operation. The other part of this power—and I remind you that the power is much more restricted with these two things in it than it would be if they were not there—is in substance for abandoned lines of railway, abandoned train service.

We can conduct those operations in the name of the Canadian National Transport Company Limited. But almost all these operations are of a non-commercial character and frankly I do not know any at the moment which is

not at a non-commercial character and they are invariably in sections of the country which are not productive of traffic; there is not enough traffic to move on the railway to justify the continuation of the railway. They are areas which are adequately served by highways and the times when we would utilize those powers would be instances in which we cannot get anyone else to do it. We have to supply to the Board of Transport Commissioners for authority to abandon 10, 20 or 30 miles of rail, and the Board of Transport Commissioners take the position if and when service is made by highway to the communities which are to be deprived of the service by the abandonment, then we will be granted the order. That is all that is implied.

By Mr. Green:

Q. But you are able to carry out that service now by using the Canadian National Transportation Limited. Are you not?—A. Yes.

Q. If you use the Canadian National Transportation Limited then you do not bring up any of these controversial questions as to whether or not that company is subject to provincial authority?—A. We do not bring that question up anyway.

Q. That is what is causing all the trouble because you are now asking for the power for the Canadian National Railways to run that service as distinct from the Canadian National Transportation Limited which would certainly be subject to the provincial regulations.—A. But in the same breath we have asked we be given this corporate power—it is a question of corporate power—and that we should go on the road to operate the service where there is none available.

Q. You could operate that service through the Canadian National Transportation Limited?—A. Yes, but it is not a Canadian National Transportation Company operation. The railway is operated by the railway operators, and they are the operating department of the property, and it is a fully known organization all through Canada whose sole function is to operate the railway as such. The transportation company on the other hand is a different arm of the organization. There are areas where rail traffic has shrunk to a point that there is freight available on the line but the passenger service has dried up and there are no passengers to speak of moving between the points, as there are highways serving them.

Then we would apply for authority to abandon passenger service. It is competent to the board to say that you have made a case but you have not provided or you have not satisfied us that public transportation is available for the residents of that community to move from point "A" to point "B", and if you will satisfy that, we will permit you to fold up the passenger service. The railway is going to remain there as a railway; the operating people are there; everybody is there, and if we are to provide the service—and we are not seeking it—it would be more economical for us to operate that little segment of a bus line in the name of the railway than it would be to bring in the Canadian National Transportation Company with its different avenues of reporting, organization and everything else. In those cases as I stated, we have in many instances endeavoured to interest bus operators in providing the service but have not been able to get anybody to do it.

Our purpose is not to go into the bus business itself, but rather the operation of it. Passenger train or passenger equipment or a way freight carries with it a loss of a certain magnitude and the loss of the business will in every instance be less than the operation of a rail service, and we prefer to take the smaller loss.

Q. Is it not true that the Canadian Pacific Railway is operating its services of this kind through a company similar to the Canadian National

Transportation Limited?—A. I cannot speak with authority about the Canadian Pacific. I hear that that is the case, but our highway operations, I do not think can be regarded as in any way parallel to the highway operations of the Canadian Pacific.

Mr. JOHNSTON (*Bow River*): Mr. Chairman, I would suggest we hear what the truck companies have to say at this time.

By Mr. Hamilton (York West):

Q. May I ask another question. I think this morning I asked if there was a consolidation of all these companies and keeping in mind the latent sections of the Income Tax Act if he would not have a saving in the over-all picture of operations and I think his reply was no. He did say it that way and yet he has answered Mr. Green and said there would be a saving if the railway company could operate here without bringing in the Canadian National Transportation Limited with all the problems of reporting separately.—A. I think that the difference is a difference of degree of magnitude in which you are speaking. You asked me this morning about the broad final consolidation. I think that is a very different thing to the question which I just answered a moment ago where we were talking about a little segment of the railway and/or bus operation.

Q. But did we not add up all those segmentary operations into a large operation of the Canadian National Transportation Limited and with it get the cost of reporting and administrative expense which we would avoid if eventually you could put them all into one company.

Hon. Mr. MARLER: Is that not an argument in favour of giving the company the power?

Mr. HAMILTON (*York West*): I do not know, but I would like an answer to that question on economy.

The WITNESS: I think I can only answer it the way I did a moment ago that in the final consolidation you have a very different result to what we would possess in the wee segments.

Mr. CARRICK: I am in trouble about Part III of the First Schedule yet. In answer to a question I asked, one of the members said that companies under part III of the schedule I, such as the Canadian National Transportation Company, are declared to be works for the general advantage of Canada outside this Act. Is that the correct understanding?

Mr. FULTON: No. I said the Canadian National Transportation Limited does not require the authority of clause 27 to operate road transport. It has under its Act of incorporation or charter.

Mr. CARRICK: So declaring that was a work for the general advantage of Canada.

Mr. FULTON: Yes.

The WITNESS: No.

Mr. FULTON: So it would get it under this Act.

The CHAIRMAN: I think we will now hear from Mr. Coyne.

Mr. Coyne is counsel for the Canadian Trucking Associations.

Mr. H. E. B. COYNE, Q.C., (*Counsel for the Canadian Trucking Associations*): After hearing the amendment proposed by the minister to clause 18, we do not wish to make any representations with respect to that section.

Now, as to clause 27 I would like it to be first of all clearly understood that we have no objection to any one's engaging in trucking operations provided those operations are under provincial jurisdiction. But we say that clause 27 will permit the C.N.R. to establish and operate truck and bus lines on the

highways, and our submission is that any highway transport lines which may be established by the C.N.R. under clause 27 will come under the language of subsection 10 (*a*) or section 92 of the British North America Act and will therefore be under dominion jurisdiction and not under the jurisdiction of the provinces.

Subsection 10 (*a*) is as follows:

"Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province."

The Canadian National Railways system consists in part of Government Railways, in part of railways owned by the Canadian National Railway Company, and in part of railways owned by subsidiaries of the C.N.R. Company. Each of these railways is a part of a continuous system of railways operated together by the C.N.R. Company and connecting the provinces, and therefore each of these railways comes under the subsection 10 (*a*) which I have just quoted.

Even a railway line which is wholly within a province and is constructed under provincial legislation will, if it connects with the C.N.R. system and is operated by the C.N.R. Company, come within the language of the subsection and be subject to Dominion jurisdiction. On this point I should like to quote a passage from the judgment of the Privy Council in Luscar Collieries *v.* McDonald (1927) A.C. 925; (1927) 4 D.L.R. 86; 57 Canadian Railway and Transport Cases, 399. The question in this case was whether a railway line known as the Luscar Branch was under Dominion jurisdiction. The Luscar Branch was only a few miles in length, wholly within the Province of Alberta and constructed under provincial legislation. It was connected with the Mountain Park Railway, another small provincial railway which in turn was connected with a railway of a subsidiary of the C.N.R. Company. By agreement both the Mountain Park Railway and the Luscar Branch were operated by the C.N.R. Company. The Privy Council held that in these circumstances the Luscar Branch came within the language of subsection 10 (*a*).

Their lordships said at page 405:

"Their Lordships agree with the opinion of Duff, J., that the Mountain Park Railway and the Luscar Branch, are, under the circumstances hereinbefore set forth, a part of a continuous system of railways operated together by the C.N.R. Company and connecting the Province of Alberta with other provinces of the Dominion. It is in their view, impossible to hold as to any section of that system which does not reach the boundary of a province that it does not connect that province with another. If it connects with a line which itself connects with one in another province, then it would be a link in the chain of connection, and would properly be said to connect the province in which it is situated with other provinces."

Subsection 10(*a*) of course covers other things besides railways. Highway transport lines also come under this subsection if they connect a province with any other or others of the provinces or extend beyond the limits of a province. This is the effect of the judgment of the Privy Council in Attorney-General of Ontario *vs.* Winner, (1954) A.C. 541; 71 Canadian Railway & Transport Cases, 225. Winner operated motor buses for the carriage of passengers and goods from Boston through the Province of New Brunswick to Glace Bay in Nova Scotia. The Privy Council decided that this motor bus line came within the language of subsection 10(*a*) and therefore was under Dominion

jurisdiction. The Privy Council further held that the undertaking in question was one and indivisable, and that therefore the Province of New Brunswick could not prohibit Winner from taking up and setting down purely provincial passengers, ie., those whose journey begins and ends within the province.

If clause 27 of Bill 351 is enacted, the C.N.R. will have power to establish highway transport lines. Each of these lines operated "in conjunction with or substitution for the rail services" will form part of a continuous system of transportation operated by the C.N.R. Company, and will be a link in a chain consisting in part of railways and in part of highway lines and extending from coast to coast. Eich of these highway lines would therefore properly be said to connect the province in which it is situated with other provinces, and will come within the language of section 10(*a*) of Section 92 of the British North America Act. It follows that these highway transport lines will be under the jurisdiction of the Dominion and not under the jurisdiction of the provinces.

I therefore submit that, if clause 27 is enacted, the effect will be to give the C.N.R. an undue preference in respect to highway traffic, and to place its competitors in that field at a serious disadvantage. For the C.N.R. will be free from any provincial regulations such as regulations requiring carriers to show public necessity and convenience before they are allowed to engage in highway traffic or regulations governing the charges for transport services; and it is clear from the judgment of the Supreme Court of Canada in the Beauport case—that case is Beauport *vs.* Quebec Railway reported in 1948 Supreme Court reports at page 16 and in 57 Canadian Rail and Transport Cases, page 245. It is clear from the judgment of the Supreme Court of Canada in that case that the Board of Transport Commissioners for Canada would have no power to deal with the rates charged by the C.N.R. in respect to highway traffic.

In view of the effects to be foreseen from the enactment of clause 27, I respectfully submit that this clause ought to be deleted.

Mr. JOHNSTON *(Bow River)*: May I ask one question of the witness? Since the government has submitted an amendment to clause 27 and given us a copy of it—and I think Mr. Coyne has a copy of it—would he consider that this amendment presented by the minister would cover the objections he has raised on this?

Mr. COYNE: No.

Mr. JOHNSTON *(Bow River)*: It is your view that the whole clause should come out?

Mr. COYNE: That is our submission.

Mr. HAMILTON *(York West)*: In connection with your position that there would be an undue privilege to the railway, that is tied up with your two reasons given that the railway would not have to prove public convenience and would not be subject to fixation of rate structure under provincial regulation ?

Mr. COYNE: Those are two points. I really am not too familiar with provincial regulations but I know in some provinces those are some of the regulations.

Mr. HAMILTON *(York West)*: Does that necessarily mean the public is going to suffer?

Mr. COYNE: Its competitors might suffer.

The CHAIRMAN: Gentlemen, we only have one reporter today and I think if it is agreable we will adjourn now until 8.00 o'clock.

Mr. MONTGOMERY: Mr. Coyne, may I ask a short question? Would your objection be met if an amendment to clause 27 by adding a subclause to read:

> All vehicles operated under subjection (*a*) would be subject to provincial jurisdiction.

Mr. COYNE: I think that would be ultra vires.

Mr. JOHNSTON *(Bow River)*: Since you have suggested that we should adjourn now, I take it that Mr. Coyne will be in his present place at 8.00 o'clock?

The CHAIRMAN: Yes.

EVENING SITTING

The CHAIRMAN: We will proceed. Are there any further questions members of the committee would like to ask Mr. Coyne?

Mr. JOHNSTON (*Bow River*): Mr. Coyne has heard the evidence given by Mr. MacMillan in respect to the safety clauses which they think they wished put in here to protect the services. On page 17 of the bill, Mr. Coyne, in the first schedule, there is the expression "The Canadian National Express Company" and down further the Canadian National Transfer Company and there are several other companies. Have you any objection at all to these names being allowed to remain there? Do you think they could operate a trucking service under that heading?

Mr. COYNE: Well, my instructions are to make no representations with respect to clause 18.

Mr. JOHNSTON (*Bow River*): I am not referring to clause 18; I am referring to page 17. You will see on the first part of that schedule there are references made, for example, to the Canadian National Express Company.

Mr. COYNE: Yes.

Mr. JOHNSTON (*Bow River*): Is it your opinion that the Canadian National Railways could operate a bus service under that heading and get all the privileges they desire regardless of the removing of clause 27?

Mr. COYNE: That is not my point of view under this schedule. The schedule simply gave the names of the company. If you are referring to some clause of the bill, such as clause 18, then as I said in my introductory statement my instructions are not to make any representations in respect to clause 18. We are simply making representations with respect to clause 27.

Mr. JOHNSTON (*Bow River*): You have no comments to make at all then on the pickup service which the railways are operating now?

Mr. COYNE: Oh! The pickup and delivery service as it has been referred to?

Mr. JOHNSTON (*Bow River*): Yes.

Mr. COYNE: Well, charges for services of that kind are referred to as charges for cartage. I am not sure whether the impression I have is correct, but there was some suggestion that the C.N.R. might not have the power to pick up and deliver. I must say that is the first time I have ever heard the question raised. In the Railway Act the definition of tolls includes cartage charges, and I would add also in section 331 of the Railway Act special arrangement tariffs include cartage rates, so that evidently it was in the contemplation of the Railway Act that the railways should do cartage; that is pick up and delivery. The Board of Transport Commissioners has had a number of cases with regard to cartage charges. They have always said that the railways are

not required to do cartage, but if they choose to do so they are entitled to charge for those services, and that they would be subject to the regulations with regard to reasonableness of charges and with regard to unjust discrimination, but the question whether a railway has the power to pick up and deliver I have never heard raised. The railways have been doing it for fifty years and no question has ever been raised that I have heard of.

Mr. JOHNSTON (*Bow River*): You will notice that in the amendment which the minister has proposed to clause 27 he has left out the words "may charge tolls." Do you think that has any significance if they can charge tolls under the Railway Act? Would that make any difference if that is left out in clause 27?

Mr. COYNE: It would not be a toll under the Railway Act according to the decision of the Supreme Court in the Beauport case. You are speaking now not of pick-up and delivery?

Mr. JOHNSTON (*Bow River*): No, I am speaking of the other charges.

Mr. COYNE: Under the Beauport case the Board of Transport Commissioners would have no regulatory power over charges made by the railway in respect to highway traffic.

Mr. FULTON: Mr. Coyne, the Beauport case was decided before the Winner case, was it not?

Mr. COYNE: Yes.

Mr. FULTON: I do not know if this is your submission, but I have been supplied with a submission by the Canadian Trucking Associations Incorporated, and I take it your reference to the Beauport case was in addition to the submission that we have got here.

Mr. COYNE: The Beauport case is referred to on the last page, I think.

Mr. FULTON: Yes, it is, I am sorry; I missed that. Would you as a professional lawyer, to an amateur lawyer, care to express an opinion as to whether the decision in the Beauport case was overruled by the decision in the Winner case?

Mr. COYNE: I do not think so. I do not think it is referred to in the Winner case.

Mr. FULTON: So you think then that you would be firmly of the opinion that if this clause 27 is enacted the C.N.R., so far as it engages in trucking and bus transport, would not be subject to any regulation whatsoever?

Mr. COYNE: No. There is a possibility that under the Motor Vehicles Act which was passed at the last session of parliament certain lines might come under provincial powers, but that Act at the present time only applies to certain provinces, as I understand it. It does not apply, for example, to Quebec.

Mr. FULTON: So far as I understand the situation it has not been proclaimed in New Brunswick either?

Mr. COYNE: No, but the number of lines which should be very doubtful whether any of the lines that would be at present contemplated by the C.N.R. would be affected by that Act because they would not cross provincial boundaries, and my opinion is that that Act does not apply to lines that do not cross provincial boundaries.

Mr. CARRICK: I wonder if we could hear from the representative of the Department of Justice on these points?

The CHAIRMAN: Not yet; I think we will hear the Transport people first.

Mr. HAMILTON (*York West*): Did your instructions not to make any statement on clause 18 arise as a result of the amendment which have been placed before us today—did you have any prior knowledge of that amendment, and is that one reason why you are not objecting to it tonight?

Mr. COYNE: My instructions are that in view of the amendment that has been proposed we should not make any representations with regard to clause 18.

Mr. HAMILTON (*York West*): Right, but notwithstanding this amendment, and in view of the cases which you have quoted here in your brief, clause 27 does still leave the railway with a complete leeway.

Mr. COYNE: It leaves any highway transport lines that are established under clause 27 under dominion jurisdiction. That is my submission regardless of any other provisions in the Act.

Hon. Mr. MARLER: Mr. Coyne, would that arise because of its operation in connection with the railway system, or does it arise because power is being granted by parliament?

Mr. COYNE: It arises because these powers are granted by parliament, and these highway lines are specifically stated to be in conjunction with or substitution for railway services so that the whole system is operated together.

Mr. LANGLOIS (*Gaspe*): Is it your contention, Mr. Coyne, that a pick-up and delivery service operated in conjunction with the National Transportation system of the National railways, does not come under provincial control?

Mr. COYNE: I should think it would not be subject to provincial legislation, no. There is one qualification there—even a dominion railway is subject to some extent to provincial legislation, and even a dominion highway transport line would be subject to provincial regulations with regard to the highway, for example, and regarding the speed of vehicles, the regulations requiring vehicles to travel on the right side of the road and so on, but those are minor things.

Hon. Mr. MARLER: Should I infer from your answer that if the words "In conjunction with or substitution for the rail services, under their management or control"—

Mr. FULTON: I am sorry, but the accoustics seem to be worse coming from your direction to ours than the other way around.

Hon. Mr. MARLER: I shall talk louder then. Mr. Coyne, am I right in inferring from what you have just said that if we were to strike out the words "in conjunction with or substituion for the rail services under their management or control"—your objection to clause 27 would then disappear?

Mr. COYNE: No sir. Those words limit the trucking and bus lines that can be established, but if those words are taken out, it just leaves it at large. They can establish lines in conjunction with or as substitution for the railways.

Hon. Mr. MARLER: But a moment ago those were the essential words that gave it the dominion character you were referring to; but if we take them out seemingly we are back to where we started. I find it difficult to understand. Your point of view seems to be that it is impossible under any wording whatever to give the national company or any other railway company comprised in national railways the power to operate motor vehicles under provincial jurisdiction.

Mr. COYNE: That is my position.

Hon. Mr. MARLER: It seems an extreme one. Your suggestion in effect is that it is impossible for a railway system to operate motor vehicles under provincial jurisdiction.

Mr. COYNE: They have a general power to operate motor vehicles anywhere under clause 27 and that would include the power to operate motor vehicle lines in conjunction with the railway connecting with the railway or in conjunction for a rail line of the railway.

Mr. FULTON: Well, Mr. Coyne, do you take objection to the fact the C.P.R. operates motor vehicles services?

Mr. COYNE: Not the slightest.

Mr. FULTON: Now then, if the C.N.R. were enabled to operate motor vehicle services on a comparable basis as the C.P.R.—

Mr. COYNE: They have that power now.

Mr. FULTON: Would you elaborate on that statement because I am very interested in that?

Mr. COYNE: The C.P.R. has a subsidy company that operates motor vehicles on highways and the C.N.R. has a subsidiary company—they are both on the same basis.

Hon. Mr. MARLER: Why cannot the parent company have one?

Mr. COYNE: Because, sir, if the parent company has those lines and operates those lines in conjunction with the railway, then it comes under dominion jurisdiction and therefore those highway lines are free from provincial jurisdiction. They are not subject to the regulations of the province, and they are not subject to any regulations of the dominion.

Mr. FULTON: Well, Mr. Coyne would you assist us by explaining the basis on which the C.P.R. operates its motor vehicle services which is not objectionable from the point of view of truckers; and would you suggest to us the basis on which the C.N.R. might be able to do the same thing on a basis which would not be objectionable.

Mr. COYNE: I am no authority on how the C.P.R. operates its motor vehicles, but the C.P.R. has a subsidiary and the C.N.R. has a subsidiary. Both engage in motor vehicle transportation. Now the powers of these companies are almost exactly the same. They are both on the same basis at the present time. This bill wil change that position absolutely.

Mr. FULTON: Is your contention this—that if we eliminate clause 27 the Canadian National Railways would be left in the same position as the Canadian Pacific Railways at the present time?

Mr. COYNE: Yes.

Mr. JOHNSTON *(Bow River)*: Under what Act does the C.P.R. get that power—under the Railway Act?

Mr. COYNE: They have incorporated the company by letters patent as I understand it.

Mr. NESBITT: How is that operation carried out?

Mr. COYNE: I suppose it is under the Dominion Companies Act. I really do not know.

Mr. FULTON: May I ask you this further question: is it your contention that the operation of motor vehicle transport by the railway must be left to a subsidiary rather than being vested in the company itself?

Mr. COYNE: It depends upon what sort of motor transportation you are setting up. Take the pick-up and delivery service for example—the railway have been connected with that for 50 years and longer. There is no question whatever about the power of the Canadian National Railway or of any other railway who are engaged in that. But you are speaking—at least I think this is what you mean—of highway transport lines which have a regular schedule.

There is no objection on our part to a subsidiary of either the Canadian Pacific or the Canadian National engaging in that service because it would be under provincial jurisdiction, but we do object to the C.N.R. getting this special and unique privilege of operating directly with the parent company and we say that if that is done that brings it under the jurisdiction of the Dominion and excludes the jurisdiction of the province.

Mr. FULTON: By virtue of section 10?

Mr. COYNE: 10 (a). Section 92 of the British North America Act.

Mr. FULTON: I see.

Hon. Mr. MARLER: I find it a little difficult to understand your point. You say in effect that so far as a delivery and pick-up service is concerned there is no question that the railways have the power.

Mr. COYNE: It has never been questioned, to my knowledge.

Hon. Mr. MARLER: I find it difficult to understand why you object to our saying that it has got that power in clause 27.

Mr. COYNE: Clause 27 goes very much farther; it would not only authorize the Canadian National Railways to engage in pick up and delivery service, but it would enable the Canadian National Railways to establish bus-line service on a regular schedule or truck line service. That is something quite different from pickup and delivery; that means that the railway would pick up goods at a consignor's warehouse and convey them to the railway station, and from the railway station to the consignee's warehouse, but that is the limit of the pickup and delivery service.

Mr. HAMILTON *(York West)*: Getting back to Mr. Fulton's line of questioning, I understand that you have indicated that there is no way whereby the federal parliament can divest the Canadian National Railways of this authority without leaving it more or less suspended in the air without any other authority having jurisdiction over it. Do you not see any way by which clause 27 could be modified to permit the use of cars, which would cover pickup and delivery which you say has been recognized for fifty years, and which still exclude the further powers which you say this section provides?

Mr. COYNE: If pickup and delivery is all that is intended, then why put in the clause at all? It is unnecessary.

Hon. Mr. MARLER: That is not the only thing.

Mr. LEBOE: Is it not true that they have a problem in respect to sustaining service, passenger service on railway lines, and that they may not be able to get a private contractor to contract to haul passengers on the highways, and that therefore when they come before the Board of Transport Commissioners they say: "When you can guarantee a service, we will let you discontinue the passenger service of your railway line." And if they cannot get a contractor, it puts them in a very awkward position in respect to getting a release from the heavy loss in passenger service on that particular line.

Mr. COYNE: They are in exactly the same position as any other railway and they have their subsidiaries. Surely they can guarantee what their subsidiaries will do.

Hon. Mr. MARLER: Pushing this off always on somebody else to do it is in my way of thinking a very lame argument. I cannot help thinking that it should be possible for the national company itself to do what a subsidiary could do. It is all very well to say that we recognize that this operation can be done through a subsidiary, but we want it recognized that it can be done by the parent company itself.

Mr. COYNE: It is the effect of doing that, which as I submit, is to place that operation under Dominion jurisdiction whereas the operation of the subsidiaries are under provincial jurisdiction. As I understand the government's policy, it is not to take jurisdiction with regard to highway traffic.

Mr. NESBITT: I am not an expert in these matters, but the Canadian Pacific Railway for instance undoubtedly has power under its charter to hold shares in other companies. For instance, they are directly related to Consolidated Mining and Smelting and Company and things like that; and also to hold shares of subsidiary companies in respect to trucks and transports. Does the Canadian National Railways have the same power?

Mr. COYNE: It has the powers in this bill, I think, in clause 31. "The national company, may with the approval of the Governor in Council, acquire, hold, guarantee, pledge and dispose of shares in the capital stocks, bonds, notes, securities, or other contractual obligations whatsoever of any railway company or of any transportation, navigation, terminal, telecommunication" and so on.

Mr. NESBITT: There is one more thing in there:

> Or of any other company authorized to carry on any business incidental to the working of a railway, or any business which in the opinion of the Board of Directors may be carried on in the interests of the national company.

In other words, the Canadian National Railways is only empowered under this bill to hold their shares in companies directly concerned with the transportation business. Would that not again bring it back to this argument that again they might not have any power to operate; at least get back to the objection of 92 (10) (*a*)? If those subsidiary companies can only be subsidiary companies which can operate a bus incidental or in connection with the railway, would that not bring any subsidiary company under 10 (*a*)?

Mr. COYNE: No.

Mr. NESBITT: Or is the company a corporate entity itself?

Mr. COYNE: Right. They are separate entities.

Mr. LEBOE: Would it be possible to make an amendment to that section, say section 92 of the British North America Act to apply to 10 (*a*)?

Mr. COYNE: No, I do not think that would be possible. I think that would be ultra vires of the parliament of Canada.

Mr. FULTON: How about this one? I do not know if the government will accept this but it is by way of a suggested amendment since I understand that the Canadian National Railways is to enable the parent company to operate these services either through the parent company or a subsidiary as may be more convenient for their purposes. I understand that it is not their desire to be in a different position from any other railway or highway transportation company. I wonder if this amendment to clause 27 would be acceptable:

> The national company, either itself or through any subsidiary subject always to the provisions of the Motor Transport Act, may in conjunction with or substitution for the rail services under their management or control, buy, sell or lease motor vehicles of all kinds and maintain and operate motor vehicles on highways in Canada or elsewhere for the carriage of traffic.

The words inserted are: "of itself or through any subsidiary subject always to the provisions of the Motor Transport Act."

Mr. CAVERS: It must be subject to that Act. Would it not?

Hon. Mr. MARLER: Would you mind giving me the wording again, please, Mr. Fulton?

Mr. FULTON: I will read it slowly. I am making this as an amendment. This would be my suggestion and I am asking Mr. Coyne whether he thinks this would be acceptable:

> A national company may either itself or through any subsidiary...

I am trying to preserve the position of the national company.

Mr. COYNE: Would you like to make it railway subsidiary?

Mr. FULTON: You can take any subsidiary you like.

...subject always to the provisions of the Motor Transport Act...

Mr. CAVERS: Do you need that? Even the present section is subject to that Act. Is it not?

Mr. FULTON: I am not sure. My thought there is that last year we enacted the Motor Transport Act and this year we are enacting this bill and including in it a declaration that all the operations of the National company are declared to be works for the general advantage of Canada. My suggestion is, for the sake of clarity, if you like, that we should in this section say that the right to operate highway transport vehicles is subject to the provisions of the Motor Transport Act. That is all. So the suggestion I have to make is that the clause might read:

> The national company may, either itself or through any subsidiary, subject always to the provisions of the Motor Transport Act, and in conjunction with or substitution for the rail services under their management or control, buy, sell or lease motor vehicles of all kinds and maintain and operate motor vehicles on highways in Canada or elsewhere for the carriage of traffic.

Now, as I understand it, it is not the intention of the Canadian National Railways to operate highway traffic except under the provisions of the provincial jurisdiction. There is no objection on the part of Mr. Coyne to their operating motor vehicles on the highway provided they are on the same terms as the people he represents now under provincial jurisdiction. If that desired objective could be reached then we are all happy.

Hon. Mr. MARLER: Did Mr. Coyne as yet say whether or not he would like that amendment?

Mr. COYNE: That amendment is just as objectionable as the present clause, because if the national company establishes motor vehicles lines, they will be excluded from provincial jurisdiction.

Mr. FULTON: Not if they were made subject to the provisions of the Motor Transport Act?

Mr. COYNE: Oh, yes. For example, the C.N.R. establishes a line from Hamilton to Brampton; that would not come under the Motor Vehicles Act.

Hon. Mr. MARLER: That is an entirely intra-provincial operation. Are you suggesting that would not be subject to provincial jurisdiction?

Mr. COYNE: I am. It would be excluded from provincial jurisdiction.

Hon. Mr. MARLER: I think that we can probably infer that in your view there is no method by which we can give the national company power to do what we are talking about.

Mr. COYNE: There is no method, sir.

Mr. CARRICK: I have the Motor Vehicle Transport Act here and section 3(1) says:

> Where in any province a licence is by the law of the province required for the operation of a local undertaking, no person shall operate an extra-provincial undertaking in that province unless he holds a licence issued under the authority of this Act.

Why would not that exactly cover this situation? You say that any highway connection that is created by the C.N.R. is a local undertaking and within

the meaning of 92(10) of the B.N.A. Act. If that is so, then this Act, in effect, says that such an operation will require permission from the local authority under the Motor Vehicle Transport Act. Why would it not be applicable?

Mr. COYNE: Would the committee permit me to get a copy of the Motor Vehicles Act?

Mr. JOHNSTON (*Bow River*): I would think if that were done and done by the parent company, then the parent company has been designated to be "works for the general advantage of Canada".

Hon. Mr. MARLER: That is excluded specifically under clause 18. Section 18 as amended is to say that all works operated under clause 27 are excluded from the declaration as being works for the general advantage of Canada.

Mr. JOHNSTON (*Bow River*): Yes, it does.

Mr. COYNE: The essential provisions I think on this point are the Motor Vehicle Transport Act:

> "Extra provincial undertaking" means a work or undertaking for the transport of passengers or goods by motor vehicle, connecting a province with any others or others of the provinces, or extending beyond the limits of a province.

Now, I do not think that a highway line between Toronto and Brampton is an undertaking for the transport of passengers by motor vehicle connecting a province with another or others.

Mr. FULTON: Would you read the definition of local undertaking?

Mr. COYNE:

> Local undertaking means a work or undertaking for the transport of passengers or goods by motor vehicle, not being an extra-provincial undertaking.

Mr. FULTON: Then read section 3.

Mr. COYNE:

> Where in any province a licence is by law of the province required for the operation of a local undertaking, no person shall operate an extra-provincial undertaking in that province unless he holds a licence issued under the authority of this Act.

Shall I read the next section?

Mr. FULTON: Yes.

Mr. COYNE:

> The provincial transport board in each province may in its discretion issue a licence to a person to operate an extra-provincial undertaking into or through the province upon the like terms and conditions and in the like manner as if the extra-provincial undertaking operated in the province were a local undertaking.

Mr. CARRICK: If that Act does not cover the situation we envisage, do you think there would be any difficulty in amending the Motor Vehicle Act so that it would cover it?

Mr. COYNE: Yes, I do not think it could be amended to cover the situation.

Mr. GREEN: As I understand it, the point is because of section 92(10)(*a*) a railway operating a bus service from Toronto to Hamilton would not be considered a local undertaking under this Motor Vehicles Transport Act?

Mr. COYNE: It would not be an extra-provincial undertaking in my opinion.

Mr. GREEN: And would it be a local undertaking? I think those were the words used.

Hon. Mr. MARLER: I think it must be one or the other.

Mr. COYNE: Local undertaking is not covered by the Act. I think as far as I recollect in subsection 2 of (3) it says:

> . . . as if the extra-provincial undertaking operated in the province were a local undertaking.

It could be put in the same category.

Mr. GREEN: Would your argument be that a province would have no authority to licence a line of that kind if it were run by the railway company?

Mr. COYNE: I would say that the railway company would not have to apply for licence.

Mr. FULTON: But surely if you give the authority to the railway company to run such a line subject to the provisions of the Motor Vehicle Transport Act then that would have to apply, would that not?

Mr. COYNE: That is a rather doubtful point. Provided that you have a bus line or a truck line which crossed a provincial boundary then possibly it might come under this Act. But in the first place I see there are certain provinces which are not affected by this Act. Among them is the province of Quebec.

Hon. Mr. MARLER: New Brunswick, Newfoundland, Prince Edward Island.

Mr. HAMILTON (*York West*): What you are saying is that if we make it subject to that Act the provisions of that Act itself do not cover this particular situation.

Mr. COYNE: By no means, except with the possibility that it might cover the odd line.

Mr. CARRICK: It is obvious that we have come to a point where there is a question of law involved and we cannot hope to settle it. Perhaps we should have a representative of the Department of Justice speak on it and we can come back to the transport people later on.

Hon. Mr. MARLER: So far as I am concerned I would like to suggest that we hear any other expressions of opinion which the bus organizations or others might wish to voice with regard to the section and after we have heard them, we might be allowed to consider the various representations made and decide whether some change should or should not be made in the amendments now before the committee.

Mr. HAMILTON (*York West*): Perhaps Mr. Coyne might be recalled for an anwer.

Mr. CARRICK: In the case you gave of a bus line being operated between Brampton and Hamilton, you said it would not be an extra-provincial undertaking within the meaning of the Motor Vehicles Transport Act.

Mr. COYNE: Yes.

Mr. CARRICK: I thought your argument in opening was that any bus line in a province which connected with a railway at all automatically became a work or undertaking under section 92—A of the British North America Act and thus came under federal jurisdiction.

Mr. COYNE: Yes.

Mr. CARRICK: If it does come under federal jurisdiction why wouldn't it be considered as coming under the Motor Vehicles Transport Act as a work or undertaking within a province?

Mr. COYNE: These are two different Acts, and the exact language used in describing an extra-provincial undertaking—

Mr. CARRICK: Is the wording not the same as that in the British North America Act?

Mr. COYNE: Yes, but the words connecting one province with another and so on. It is an undertaking for the transport of passengers or goods by motor vehicle.

Mr. CARRICK: Yes.

Mr. COYNE: Certainly you cannot say that a transport line between Hamilton and Brampton connects Ontario with any other province by motor vehicle. Even if it is operated by a railroad it does not connect by motor vehicle.

Mr. LEBOE: Unless it is delivered to or from the railway in connection with one freight charge.

Mr. COYNE: No, you cannot regard that.

Mr. LEBOE: Operating in conjunction with a railroad?

Mr. COYNE: No, no. It is not an undertaking by motor vehicle connecting one province with another province. It may be, as I suggest, in connection with subsection 10A, a continuous system of transportation composed in part of highways links and railways links, but that is not within the intent of the definition in the Motor Vehicles Transport Act.

The CHAIRMAN: I think it would be well now to hear from Mr. Thompson, president of the Canadian Motor Coach Association.

Mr. GEORGE C. THOMPSON (*President of the Canadian Motor Coach Association*): Mr. Chairman, Mr. Minister, members of the committee, the Canadian Motor Coach Association represents highway bus companies from coast to coast in Canada. These companies have been developed during a period of approximately fifteen to 25 years depending on the territory in Canada concerned. These bus operations are largely intra-provincial operations. They have inter-line connections which provide service to people, not completely from coast to coast in Canada, but substantially, with a slight detour to the United States, so that it is possible to travel by bus from coast to coast.

These operations have been developed under provincial authority, the only authority existing until recent years under which bus operations could be developed. These provincial boards exercise strict control. They require convenience and necessity as a basic factor in issuing certificate and franchises or licenses; they require financial responsibility. They require strict observation of service tariffs, and other practical operating requirements.

The history during that period in which it can be said clearly that substantially worthwhile operations have been developed from coast to coast. The regular service operated almost completely throughout the year. That is the story of the position of the highway bus industry in Canada.

The first real jar to the position of the highway bus in Canada came with the decision of the Privy Council in the Israel Winner case which in substance said that highway transportation in Canada on an intra-provincial basis is a matter for the federal authorities and not for the provincial authorities. It may be said also that the decision in the Winner case was that the certificate held by the carrier then concerned was invalid or had no value. At least it may be argued quite seriously, and it is a matter of some significance today, in this whole problem. The federal government did not wish

to accept that authority and after careful consultation with the provinces concerned, the Motor Vehicles Transport Act, being chapter 59 of the Act of 1954, was passed. The purpose of that Act as stated when it was in the form of Bill 474 was simply to provide for the control and regulations of intra-provincial and international highway transport.

It seemed that the whole problem of highway bus and transport operations in Canada had been settled. Those of us in the Maritimes—and I happen to come from Halifax—are very familiar with the history of the so-called Israel Winner case, because in recent years the Canadian National Transport Company, known as the MacKenzie Through Line—a surprise perhaps not intended which came about within the past three weeks when a notice appeared in the Halifax papers of May 11 on behalf of the Canadian National Transport Company, and the MacKenzie Bus Lines, that hearings would be held at Halifax on May 20 in order to confirm the certificate issued to Israel Winner in June 1948, and further to delete the condition placed on that certificate, so that he could not pick and drop passengers within the province of Nova Scotia.

It was somewhat surprising at the hearings to hear the local representative of the Canadian National Transport Company contend with respect to these things that the board could not refuse to grant a licence; that they would merely operate seasonal service; that they need not prove financial responsibility; and that the board could do nothing to delete the condition because in fact they were doing it, and there was nothing the board could do to stop them from carrying on intra-provincial trucking.

Evidence at the hearing brought out such facts that if an intra-provincial passenger was on the bus going from one point to another in the province and an intra-provincial passenger got on with a reservation, the local passenger would have to get off and give up his seat to the through passenger. I refer to this case because I believe it is specific to this whole problem we are discussing now, namely, that the Canadian National is talking one way in Bill 351, and they are here thinking through the subsidiary situation of the Canadian National Transport Company. They are attempting to make an end run or to manoeuver around the Motor Vehicle Transport Act. I say that quite seriously because I know that all of us are quite serious about this problem. But it is difficult for me to understand the comments given here that what the Canadian National Railway is trying to do is to detach the problem from the Board of Transport Commissioners and to have somebody provide a service when we want to furnish a line.

Canadian transportation is definitely persisting in the continuation of a losing proposition. It can be established that it has lost at least half a million dollars over the last period of years by Israel Winner and his predecessors, and it is a highly seasonal operation, and that it is only connecting with Halifax on the weekends. It was further surprising that the Canadian National Transport Company, perhaps somewhat mistakingly, indicated that they had every intention to proceed with this service this year, and that the only reason there was a hearing was because the Board of Examiners, or Board of Public Utility of Nova Scotia is acting as the provincial transport board, that the matter was heard, and that there was new hearings.

There has been no decision in the case yet, although an early decision was sought. I do not know what the board will decide. We can imagine the effect if the decision is that a new certificate should be issued to Canadian National Transport Company to operate this inter-provincial business, which would be the beginning of operating a highway bus service from coast to coast in Canada. Our position is that if we are going to run a competitive service throughout this country with inter-provincial operations, then the public will

suffer because, in its wisdom in granting a limited franchise, the board of the province have decided it is better to control the whole part of this operation than to permit several operators to operate with limited revenues for all concerned.

The limiting of the control is with respect to the number of franchises or certificates granted, but there is control in respect of the public in order that there may be a regulated, controlled and good service provided by them.

In some cases there are two or more services under circumstances where, if there is a failure to provide a good and sound service to the public the operator risks the possibility of losing his certificate and someone replacing him. Now, coming to Bill 351, in the view of the Canadian Motor Coach Association we think it is a sensible idea to attempt to consolidate the Acts of the Canadian National Railways, but we believe there is no sensible reason for thinking that the national project should be permitted to do these things which its subordinates might do. When Bill 351 was first introduced, that point emerged with respect to section 92-A-10 of the British North America Act and it was thought that it would mean that the Canadian National Railways envisaged completely circumventing the intention of the Motor Vehicles Transport Act, of being required to go through the provincial boards. May I say as an aside that there seems to be a legal question, not one which I would attempt to answer, that the Motor Vehicle Transport Act either delegates full authority to the provinces to administer it, or it merely sets up an arrangement for the provinces to act as a federal-provincial transport board and to administer the Federal Act. When these thoughts are combined with the possibility of the Canadian National Railways, including the Canadian National Transport Company—with the limitation that they could be works for the general advantage of Canada—it seemed to us that the whole of the Motor Vehicle Transport Act would be defeated.

The amendment that was proposed is such that it seems substantially to eleminate any objections we have to bill 351 as amended. Our basic fear is that possibly unless some phrasing is added to clause 27 it might be possible for the subsidiary, Canadian National Transportation to ignore the provincial boards and get itself into competitive business with the provincial bus operators and thereby destroy what has been built up under the supervision of the provinces to the advantage of the people, primarily, as well as to the advantage of the operators and provinces. That duplication is something which the highway transport industry cannot stand. Now the views of the Canadian National Railway as expressed ably today by Mr. MacMillan are such that any of us may well accept and not worry any more. I think all of us realize that the views expressed here today, however, though instructive and helpful, are just views; when the Act is defined the intentions which have been expressed here will not be the important factor. It will be the words of the Act and interpretations of the cases under the British North America Act—some of which have been referred to here today—which will count.

Therefore, Mr. Chairman, in ending my remarks I say that if there is some way whereby your committee can be ensured that the intention of the Motor Vehicles Transport Act will be carried out by all concerned we feel there is nothing further we can object to.

The CHAIRMAN: Have members of the committee any questions which they would like to ask Mr. Thompson.

Mr. JOHNSTON (*Bow River*): I understood Mr. Thompson to say that if there were some way by which we could take the Canadian National Transportation law out from clause 27 that that would meet his desire.

Mr. THOMPSON: Permit me to correct you, Mr. Johnston. I did not have that thought. My thought was expressed along the lines that possibly some wording should be added to clause 27 to make sure that the actions of the Canadian National Railways and/or the Canadian National Transportation . . .

Hon. Mr. MARLER: I think, Mr. Thompson, we ought to except that because after all we are talking about the national company and every other railway company under the National Railways.

Mr. THOMPSON: If you wish. Our thought is that this clause should be limited so that it will be necessary for the national railways to go through the same channels that others must do and in their case, when it is intra-provincial transportation, that is through the Motor Vehicle Transport Act which was passed last year. That means in effect that they must do things similarly to the provincial operators before the Provincial Boards.

Mr. JOHNSTON (*Bow River*): Do you believe that the amendment that the minister is suggesting now will take care of that?

Mr. THOMPSON: I think it will, subject to what further can be done under clause 27 to ensure that—for example, "subject to the rights of the provinces" or "subject to provincial Acts" or some phrase such as that.

We feel that whether or not the C.N.R. or the C.N.T. does these things is incidental.

Mr. JOHNSTON (*Bow River*): I think you heard the minister say he was proposing to make an amendment of clause 27. Do you still contend that even with this amendment your problem would not be covered—the problem which you have in mind?

Mr. THOMPSON: Yes.

Mr. JOHNSTON (*Bow River*): Something else should be added?

Mr. THOMPSON: We feel so.

Mr. JOHNSTON (*Bow River*): Have you any suggestion as to what might be added—have you any proposal to make?

Mr. THOMPSON: The phrasing which has been suggested to us is, I believe "subject to the Acts of the provinces" but that may not be sufficient if in court cases at a later date it was held that the Provincial Transport Board, acting under the Motor Vehicle Transport Act, was acting under federal statute and therefore that the limitation would not apply. If some phrase was used such as "subject to the rights of the provinces" it is possible that such a limitation woud overcome the objection I have mentioned.

Mr. JOHNSTON (*Bow River*): You would be satisfied with an amendment which had that in view?

Mr. THOMPSON: Yes.

Mr. JOHNSTON (*Bow River*): But you have no definite wording in mind which you wish finally to suggest to the committee?

Mr. THOMPSON: That is correct.

Mr. HAMILTON (*York West*): Mr. Thompson, have you got any answer to the position which Mr. Coyne has taken, namely that nothing short of the complete abolition of clause 27 will do?

Mr. THOMPSON: I am an admirer of Mr. Coyne and of his great knowledge in this particular field, but I must state that I take an entirely different view from his. I have no objection to the C.N.R.—doing what its subsidiaries are doing because it is common sense that the C.N.R., one single organization with many subsidiaries, should be permitted to do these things.

Mr. HAMILTON (*York West*): I think Mr. Green suggested that the subsidiary should be subjected to the provisions of the Act we have been speaking about.

Mr. THOMPSON: We do not think that.

Mr. HAMILTON (*York West*): You do not agree?

Mr. THOMPSON: No, we think that clause 27 is somewhat similar to giving corporate powers to a corporation and it is reasonable that the C.N.R. should have in their statute words and phrases to permit them to do things which they are in fact doing.

Mr. JOHNSTON (*Bow River*): You base that view on the matter of law in this case—or do you base it just on the common sense point of view?

Mr. THOMPSON: I base it largely on the common sense view and on my own limited knowledge in the field of law.

Mr. FULTON: Surely common sense and the law are the same?

An hon. MEMBER: Not always.

Mr. THOMPSON: As I said, I base it largely on common sense. Secondly, in my own limited way, I believe a reasonable interpretation of the phrase involved in the British North America Act would give all the powers as a right.

Mr. JOHNSTON (*Bow River*): Have you anything on which to base that opinion?

Mr. THOMPSON: I would answer "no" to that. I do not wish to cite any particular case.

Mr. JOHNSTON (*Bow River*): I wish we could have the exact wording which you have in mind in order to remove your objections, because we have been trying to find some way out of this but it seems that we cannot. Both you and Mr. Coyne and your organizations have given this matter considerable thought and are probably in a better position than most of us here—we are not lawyers—to contribute to the solution of the problem and even if it took you some time I would like to see a draft amendment which would be satisfactory to you to section 27.

Mr. THOMPSON: We would endeavour to do that, but the difficulty in our minds is mainly the two-headed face of the C.N.R. which we are discussing, and the C.N.T. which we are not discussing.

Mr. LEBOE: What bearing would the views which have been expressed during the discussion today have on decisions of the courts?

Hon. Mr. MARLER: I think they would be very interested, but no more than that.

Mr. GREEN: Is it the intention that the Canadian National Railways, if it gets this power, should have to go to its provincial boards for a licence in the same way as traffic companies today?

Hon. Mr. MARLER: Exactly.

Mr. GREEN: Everybody is aiming at the same objective and it comes down merely to a question of phraseology.

Hon. Mr. MARLER: I think so. I might ask you a question, Mr. Green; supposing, Mr. Green, that we added to the end of clause 27 that the power granted in this section shall be exercised subject to the rights of the provinces, or some such wording. What is the effect of putting that in clause 27 but not putting it into clauses 28 and 29 and some of the other clauses of the bill? Would it be your opinion that by putting it into one but not putting it into the other you would create a rather invidious difference between the two articles? Would you not think that by putting it in in the one case and not in the other—if, in the one case, you inserted the phrase "to be exercised subject to provincial rights" but did not do so in the other cases—you would be creating a distinction which might lead to difficulties?

Mr. GREEN: I have not given the matter very careful thought and I hesitate to express an opinion but I would think that to use the words "provincial rights" would be going very far. Maybe there should be a restriction worded something like this: "subject to provincial enactments having to do with control of motor traffic and also subject to the provisions of the Motor Vehicle Transport Act of the Dominion. If you put that in it might get you out of the difficulties.

Mr. FULTON: Is not the answer to the point which the minister has raised: that all the other clauses of the bill apply to railway matters which are subject to provincial jurisdiction. In clause 27 you refer suddenly to highway.

Hon. Mr. MARLER: The word "highway" does not appear.

Mr. FULTON: But we are authorizing the railway company to operate vehicles on highways and which in the Motor Transport Act last year we made subject to provincial jurisdictions. Therefore to suggest such limiting words as the minister has indicated he is prepared to contemplate is not to make an invidious distinction between clause 27 and the other clauses of the bill but is perfectly logical because this is the only clause—at least it is the main clause —which deals with highway transport in this bill.

Hon. Mr. MARLER: I was going to suggest that if no one else wishes to make representations with regard to clauses 18 and 27 that perhaps we might leave them in suspense for the time being while the railways consider the views which have been expressed in the committee today, and that we might perhaps go on to deal with clause 19 and following clauses of the bill.

Mr. HAMILTON (*York West*): Are there any other representations to be heard?

Hon. Mr. MARLER: I said we might go on if no one else wished to speak . . .

Mr. JOHNSTON (*Bow River*): Would it materially affect anything he has in mind with regard to the operations of the railway companies? He has expressed the view that he does not want to give them any more power than they had before, and that they must comply with provincial legislation.

Mr. THOMPSON: I did not say the first part of that, Mr. Johnston.

Mr. JOHNSTON (*Bow River*): I said that in view of the fact that you have expressed the opinion that you are not advocating that the railways should be given any more powers than they already have.

Mr. THOMPSON: I did not say that. I said the powers that they were to be given under clause 27 were to be exercised subject to the jurisdiction of the provinces.

Mr. JOHNSTON (*Bow River*): Yes. If we left clause 27 out entirely would that accomplish what you have in mind?

Mr. THOMPSON: It would, very positively.

Mr. HERRIDGE: I think the suggestion of the minister that we might pass on while the railways are considering this matter an excellent one.

Mr. HAMILTON (*York West*): Would it be possible to hear the representative of the Department of Justice before we retire?

The CHAIRMAN: We may have another gentleman to give evidence.

Mr. LEBOE: Do you think that the Motor Vehicle Transport Act would apply to this legislation with the suggested amendment?

Mr. THOMPSON: I am not sure that I know what you mean.

Mr. LEBOE: Did you think that the Motor Vehicle Transport Act would apply to the suggested legislation before you had heard Mr. Coyne's argument?

Mr. THOMPSON: It is difficult to answer because I discussed that argument with an associate of Mr. Coyne last night and I disagreed at that time, so I was not affected, perhaps, by his argument today. I respect his opinion but I come to a different conclusion.

Mr. LEBOE: Thank you.

Mr. NOWLAN: I was wondering whether Mr. Farebrother is here.

The CHAIRMAN: I am expecting him, to represent Mr. Todd.

Mr. NOWLAN: Mr. Todd is not here but Mr. Farebrother was coming here to represent him.

Mr. JOHNSTON (*Bow River*): Are we going to hear the Department of Justice now?

Hon. Mr. MARLER: I think it would be better if we postponed that until we know what we are going to deal with specifically.

The CHAIRMAN: Clause 19. Are there any questions on 19?

Mr. GREEN: Could we have an explanation from Mr. MacMillan?

The WITNESS: Clause 19 is a complete rewrite of section 18 in the C.N.R. Act of 1919. There is no change whatever.

The CHAIRMAN: Shall clause 19 carry?

Carried.

The WITNESS: The same is true of clause 20. It is section 19 of the C.N.R. Act of 1919.

The CHAIRMAN: Shall clause 20 carry?

Carried.

Clause 21.

The WITNESS: Clause 21 is exactly the same as section 14 (2) of the C.N.-C.P. Act of 1933.

Mr. NOWLAN: I do not wish to argue, but I would suggest there is some slight variation between clause 21 as in the bill and section 14 (2) of the C.N.-C.P. Act, because in section 14 (2) of the C.N.-C.P. Act the words are:

"....direct, provide and procure...."

Those words for some reason or other have been left out.

Hon. Mr. MARLER: The word "procure".

Mr. NOWLAN: Yes. I think the word "procure" is a very, very important word in freight and I wonder why it was left out of section 2. When you look at section (2) you will find it says:

"direct, provide and procure...."

and so on. The procuration is left out entirely in clause 21 as it now appears in the bill. I do suggest, with all deference to Mr. MacMillan, that those words have some significance wherever they are used, but in particular when they are used with respect to the acquisition of freight. I know that someone will suggest that the word "procure" is one of doubtful meaning, but I do think those words should be left there and that we should have the old enactment of "direct, provide and procure." I would also like to ask Mr. MacMillan what is being done in the Canadian National system today in directing and providing that this be done, because when you look at the figures provided by the Dominion Bureau of Statistics you will see that they certainly have been ignored entirely by those who presumably are responsible. I would like to have his comments on that.

Mr. HAMILTON (*York West*): I notice the wording is not the same. Clause 21 says:

"All freight originating in Canada, destined for export by sea and consigned for carriage . . ."

and the old section said:

"All freight destined for export by sea that is consigned within Canada for carriage . . ."

I would think that there is a difference in the meaning between "point of origin" in the one case and "destined" in the other. Under the old Act no matter where those goods came from if they were consigned within the limits by an exporter in Canada they would go through a Canadian port and under the new section the goods themselves would have to originate from Canada to go through that Canadian port. I think there is a restriction there which does not exist in the original Act.

The WITNESS: May I answer the second question first. There is nothing sinister in this new language at all. We have tried to explain the thoughts in the old section 14 (2). My own view is that this language is more apt and more descriptive than the old language and that we have not tried to do anything in respect of this at all.

Mr. NOWLAN: You have omitted the word "procure".

The WITNESS: I grant that and I say we have no bones to pick with the word "procure". My humble opinion is that it does not add anything to the language at all.

Hon. Mr. MARLER: Certainly the grammar leaves much to be desired.

The WITNESS: It is to put it in more grammatically correct form.

Mr. HAMILTON (*York West*): What about the illustration I gave?

The WITNESS: You are placing on it a very restricted meaning, that it would be applicable to goods manufactured only in Canada. We are not thinking in those terms at all. It is freight and goods on the railway, the shipment of which begins within Canada. I should point out to you, of course, that the instances in which any railway—not the Canadian National but any railway—is able to direct traffic are infrequent. Traffic is almost entirely routed by the consignee or consignor in the manner in which it receives the most rapid delivery.

Mr. NOWLAN: That was the reason why I objected to the word "procure". I quite realize that the consignee has an over-all control over the situation. But, the Act as it is now drafted says:

"That the board of directors"—which of course is a pseudonym—shall direct and provide and as Mr. MacMillan has said you can direct and the consignee may say "I am sorry, but I am going to send it out by Portland Maine". That is the way a tremendous amount of goods originating in Canada are shipped today. I am willing to admit that legally it would not impose any very great legal burden. You have been establishing all day that your organization is responsibile to the parliament of Canada and I would suggest to you and to the minister that it is an obligation that you should accept and that you should not even try to—and I am not saying you do it deliberately—disallow occasionally this responsibility of trying to procure traffic over Canadian lines and to Canadian ports.

I would suggest that those words should be re-inserted in the clause. Having said that I also would like Mr. MacMillan to comment on what the

directors have done under the "directing and procuring" and now as the section stands: "Directing and providing". What has been done by the Canadian National Railways in making sure Canadian goods have been shipped over Canadian railways to Canadian ports? We all know the figures of how that traffic has diminished to such an extent that it is really appalling at the ports of Halifax and the St. Lawrence and all Canadian ports in the east and west. I think that we should have a little accounting from the Canadian National Railways as to what they have done to implement that section in the past.

The WITNESS: I do not know that I can answer. That is a question which I have never had to answer before. It is something which is rather broad in scope. I would suggest that it would require some study to provide you with an answer. It is a freight traffic problem. It seems to me odd that what you contemplate should arise in the discussions dealing with the consolidation of the legislation.

Mr. NOWLAN: You spelled it right out in clause 21.

The WITNESS: I am sorry I am just unable to answer that.

By Mr. Fulton:

Q. I wonder if Mr. MacMillan would not be prepared to agree that apart from what might have necessitated the dropping of the word "procure" there is a subtle difference between the words "destined for export by sea and consigned for carriage by national railways" and the old words "destined for export by sea that is consigned within Canada for carriage to national railways". I must say that it seems to me to say now that the phrase "must originate in Canada" is a very different thing from saying the phrase "must be consigned through national railways in Canada."

Hon. Mr. MARLER: The present language is "consigned within Canada".

Mr. FULTON: No.

Hon. Mr. MARLER: It is in the Act.

Mr. FULTON: Do you mean in the present Act?

Hon. Mr. MARLER: Yes.

Mr. FULTON: The present Act is:

> The Board of Directors shall direct and provide that all freight originating in Canada, destined for export by sea and consigned for carriage by National Railways either from the point of origin or between that point and the sea, shall, unless it has been by its shippers specifically routed otherwise, be exported through Canadian seaports.

Hon. Mr. MARLER: Is there any difference between: "consigned in Canada" and "freight originating in Canada"?

Mr. FULTON: I would think that there most certainly is. Freight originating outside of Canada might be consigned within Canada for carriage by Canadian National Railways; that freight would have then to be directed to a Canadian port. But now, to bring it within the provisions of the proposed section, the freight has to originate in Canada. Unless there has been some judicial interpretation given to the words of the old section of which we are not aware I am quite convinced there has been a substantial difference in meaning.

Hon. Mr. MARLER: Quite frankly I see a little difficulty, with respect to the "procure", in seeing how one could say in effect that the Board of Directors shall procure that all freight shall do something. It seems to me that is not good English.

However, in view of these observations we might take another look at this and perhaps we should let it stand for the time being.

By Mr. Johnston (Bow River):

Q. When Mr. MacMillan was talking about this clause and pointed out that it was exactly the same as in the old Act I thought that that meant exactly what it said. Now I am a little surprised when Mr. Nowlan suggests it is different and Mr. MacMillan is very reluctant to put it back in again.—A. Oh, no. What I should have said if I did not say it—and I think I did—was that it was intended to be identically the same. This little section here is merely in these words to try to bring it into conformity with the English throughout the statute. It has had the examination of half a dozen legal people working on it. Unfortunately it comes in a form which you do not find palatable.

Q. Why not put it back in and let it go at that?

Hon. Mr. MARLER: On that basis we are just doing a scissors and paste job.

Mr. GREEN: Surely this is a kind of situation the intention of which can only be implemented by some definite action taken by the Canadian National Railways. We are very much interested on the west coast although I think it is more important to the ports in the maritimes. Could Mr. MacMillan not find out, before we meet tomorrow, what actual steps are taken by the Canadian National to see that this section is carried out? He said that nothing much could be done about persuading shippers to ship in one particular way—

The CHAIRMAN: Could we let the clause stand until tomorrow?

Mr. GREEN: Just a minute—and that the shippers would ship as they wished. But if it happens that across Canada your agents have had definite instructions from the C.N.R. management that they should procure or provide or that they should always keep this section in mind? It does seem to me there would be far more likelihood of the section being of some value. Could we hear from Mr. MacMillan tomorrow?

The CHAIRMAN: We will let this clause stand until tomorrow.

Hon. Mr. MARLER: Mr. MacMillan will endeavour to obtain the information but he may not have it by tomorrow morning.

The CHAIRMAN: Clause 22.

Mr. LEBOE: As a shipper of many hundreds of carloads of lumber in the past, I say that one of greatest bargaining advantages we have is this business of where the load is going to be carried, whether it is to be a long haul or a short haul, and at what place it is going to cross the border, and that in my opinion is the substance of the whole thing, and the rest of the business does not amount to anything in my opinion, because that is where the bargaining power rests, and I think Mr. MacMillan will bear that out.

The WITNESS: I really would not wish to answer on that question.

The CHAIRMAN: We will let 21 stand. Clause 22.

By Mr. Green:

Q. Could we have an explanation of what steps must be taken at the present time in order to build a branch line, in the first place by a Canadian Government Railway and in the second place by the Canadian National Railway—and then what steps will be necessary under this new section.—

A. I had hoped, Mr. Green, that the lengthy discussion we had this morning on this subject had resolved all your difficulties on that point. The procedure presently applicable to the construction of branch lines is that contemplated by section 20 of the Canadian National Act and you will notice that under that section, "with the approval of the Governor in Council", there must be an order in council and "upon any location sanctioned by the Minister of Transport", the minister must sanction the location, the railway may "from time to time construct and operate railway lines branches and extensions or railway facilities of any description in respect to the construction whereof respectively parliament may hereafter authorize the necessary expenditure or the guarantee of issue of the company's securities".

That language has been in the Act since the beginning. It has been determined as meaning that the essential characteristics or condition precedent is the financial aspect of the matter. Parliament must have either authorized the necessary expenditure or in the alternative authorized the issuance of company securities and crown guarantee.

The procedure is to insert an item covering intended construction into the annual budget and that budget is placed before parliament in due time; it is approved by the Annual Financing and Guarantee Act and members of the committee will recall that each year they deal with that statute.

The Financing and Guarantee Act does two things: it first authorizes the expenditures contemplated in the first section which would meet the requirements of section 20, but it also goes on to authorize the issuance of guaranteed security so that we actually meet the different conditions set out towards the end, and now under the new section.

Q. Before you leave your account of the procedure under the existing law, will you tell the committee in what cases the railway company asks parliament for a special Act? For example we had a special Act to construct the Lynn Lake line and several others, and apparently sometimes you proceed in these matters by special Act of that kind, while in other cases you just have the regular C.N.R. financing legislation. Where is the line drawn?—A. Where the line is drawn? Those were the lines to which I referred to a minute ago—the small industrial lines—the lines of no great length required to service industries. They are really in the category of industrial spurs. Where we were contemplating the construction of what would become branch lines we invariably apply for a special statute authorizing this construction.

Q. I see. There is no fixed rule.—A. No, there is no fixed rule that I know of. I would say that the normal saw-off is the five or six mile category.

Q. Would you go on and explain what the procedure will be under the new section?—A. Under the new section—do you wish me to read it?—Almost the same routine is provided there as under section 20 with the one exception that if the branch line or the extension does not exceed six miles in length we do not have to have prior parliamentary approval of the expenditure or to guarantee the securities.

Q. Some of these extensions would cost a great deal. I think the Kitimat line is costing about one million dollars a mile.

Hon. Mr. MARLER: I do not think it would be quite so much as that.

Mr. GREEN: No. But it means that several million dollars could be committed by the railway without getting parliamentary authority.

The WITNESS: The practical application of course is that what we are talking about here are industrial spurs—spurs to serve industry and I should tell you that we do not build spurs to serve industry unless we can either get a positive guarantee of traffic in return or in the alternative, money is put

right on the table as it is in many instances. The fact does remain that five or six miles of construction could involve a fairly substantial sum but nothing of the order of magnitude to which you have referred. The Kitimat line is 40 miles long.

By Mr. Green:

Q. Forty six.—A. It runs through difficult territory, you remember. This situation which is contemplated here is not that one at all. This is a power which would be utilized to build short lines into a factory which might be located a short distance off the main line or off some other line.

Q. Well, why should Canadian National Railways not be subject to the Railway Act—to the provisions of the Railway Act—in respect of branch lines in the same way as other railways in Canada?—A. We talked about that at considerable length this morning. The reason why is, I think, that in the beginning it was determined that it should not be. I cannot tell you what was in the minds of the government of the day, but that was the determination reached.

Q. Would the new subclause 1 (*b*) give the railways the power to have included in their estimate which comes before parliament the amount that would build a line, say 50 miles long?—A. It might be, but it would not give us the franchise.

Q. The way this is worded here—A. It is exactly the same as the old section.

Q. I know, but the way this is worded—Would you not have power under this clause to build any line you wished? This is not limited to branch lines. The Railway Act refers only to branch lines but this bill says "railway lines, branches and extensions". Now as I read clause 22 you could build a line 50 miles long or a line 100 miles long or a line 150 miles long under that section. Is there any legal restriction?

Hon. Mr. MARLER: I think Mr. Green, that the clause makes it quite clear that if the lines, branch or extension does not exceed six miles in length you can do it without obtaining parliamentary approval or getting a parliamentary vote in respect of the moneys; but if it is more than six miles in length then subparagraph (*b*) provides that the necessary expenditure or the issue of securities must be authorized by parliament.

Mr. GREEN: Yes, but in that sub-clause (*b*) there is no restriction so that they could build any line as I see it, irrespective of the length of the line.

Hon. Mr. MARLER: If that is so under this clause it was so under section 20 of the Canadian National Railways Act.

Mr. GREEN: That is quite true. But is it right that there should be a wide open field?

Hon. Mr. MARLER: I do not think the field is wide open. I think that parliament either by authorizing the expenditure or by specifically authorizing a new project has effective control.

Mr. GREEN: In any case it is the policy of the railway company to get a special Act of parliament for any lines which are in fact new lines.

Hon. Mr. MARLER: I think that has been the case in the past few years.

By Mr. Green:

Q. Is there any intention to change that policy?—A. We would not change it because we want some place in a statute to be able to read that parliament has said "you can build a line from Loon lake to Loon river" for example.

Q. Under this section the Minister of Transport can say that?—A. No, he cannot. Parliament must say it. I am not familiar with parliamentary pro-

cedure but I would think that whether parliament is saying "you are hereby authorized to make the following expenditure..." —and they are tabulated in an official Act, which is one way in which parliament speaks—or whether it is through the enactment of a charter authorizing the construction, it is still parliament which is speaking and an Act of parliament by virtue of which we build.

Q. Yes but I am referring to special Acts, such as the Kitimat Act or the Lynn Lake Act. Those are the cases to which I am referring. Under this clause it reads:

> With the approval of the Governor in Council and upon any location sanctioned by the Minister of Transport, the National Company may construct, maintain and operate railway lines, branches and extensions
>
> (*a*) if the line, branch of extension does not exceed six miles in length, and
>
> (*b*) in any other case, if parliament has, in respect of the construction thereof, authorized the necessary expenditure or the guarantee of an issue of the National Company's securities.

That gives the power to the minister to say there will be railway from Terrace to Kitimat.—A. It does not if parliament—and I emphasize the word "parliament"—has not authorized the necessary expenditure or the guarantee of the issue of the National Company's securities, and that is what we ask parliament to say in the special Act which is passed, and this is really, if it is anything at all, an invitation to the Canadian National to apply for a special Act to endorse the construction of a line from Loon Lake to Loon River, for example.

Q. There is no intention to change the policy which has been followed so far?—A. None.

Q. What is the situation with regard to Canadian Government railways as distinct from Canadian National Railways?—A. Well, as I said, Mr. Green, the power of Canadian Government Railways is the power of the minister. That is the power of the Canadian National. Construction by the Canadian National comes under clause 22. If the minister were to chose to do some construction by way of extension to the Canadian National Railways, presumably he would do it under the Government Railways Act.

Q. What is the procedure followed under the Government Railways Act for the building of branch lines or new lines or extension?—A. Would you like me to read the provision from the statute? This is section 8 of the Government Railway Act:

> The Minister may, by and with the authority of the Governor in Council, build, make and construct, and work and use sidings or branch lines of railway, not exceeding in any one case six miles in length, for the purpose of
>
> (*a*) connecting a city, town, village, manufactory, mine, or any quarry of stone or slate, or any well or spring, with the main line of the railway, or with any branch thereof,
>
> (*b*) giving increased facilities to business, or
>
> (*c*) transporting the products of any such manufactory, mine, quarry, well or spring.
>
> The Minister and those acting under him, for every such purpose, have and may exercise all the powers given them with respect to the main line; and all the provisions of this Act that are applicable to extensions extend and apply to every such siding or branch line of railway.

> Where the branch or siding does not exceed one mile in length, the minister may construct such branch or siding without an order in council; and in the event of his so constructing a branch or siding not exceeding one mile in length, all the provisions of this Act that are applicable to extension, as aforesaid, likewise apply in the manner aforesaid.

Q. How do they go about having parliament approve the expenditure of the money in the case of the branch lines of the Canadian National Railway?—A. You have in mind construction by the minister? I cannot answer that. I do not know.

Hon. Mr. MARLER: There is no statutory power given to the Minister of Transport to spend money under the Act. The money must be voted by parliament for the purpose, so again you come back to the necessity of having parliamentary authority.

Mr. GREEN: Has it been the practice in the case of lines over six miles in length to come to the House for special authority?

Hon. Mr. MARLER: I have not been minister long enough to be able to answer the question.

By Mr. Fulton:

Q. I think you told us this morning Mr. MacMillan that all these lines have been built by the Canadian National Railway.—A. That is my understanding.

Q. The policy of the railway in future I take it then, is to operate any of these branch lines under the new clause, clause 22?—A. Oh yes.

Q. Even if they are branch lines of the Canadian Government Railway?—A. Branch lines, yes. I would like to say this that in regions such as that in which the Intercolonial operates, if an industry came along and sought a little track to serve that industry I do not know that the question of whether that half mile, or quarter mile, or 200 yards of track was going to be regarded as Canadian Government Railways or Canadian National Railways. It is not the type of thing that is going to create very much excitement in any place. But it is just a service to the industry. Branch lines as such, running off the Canadian Government Railways have in fact been built under the authority of special Acts and the most recent one which I recall was the extension made from Barraute to Kiask Falls. I think it was roughly 60 miles long, and we built about 40. That originated on the National Transcontinental and it was the Canadian National Railway Company that was authorized to do that construction, and it was that company which built the line.

Q. What does the C.P.R. have to do, Mr. MacMillan, to build a line of any more than six miles in length?—A. As I said, Mr. Fulton, I am reluctant to tell you what the C.P.R. does. I do not want to say anything which could be taken as binding on them, and I am not familiar with their procedure.

Q. What are the requirements of the Railway Act or any other statute which would be binding on the Canadian Pacific Railway in this regard?

Hon. Mr. MARLER: I think it is perfectly clear that under the Railway Act the Canadian Pacific Company can build lines up to six miles in length with the approval of the Board of Transport Commissioners, but as I said in parliament the other day so far as branches off their main lines are concerned—which, I understand, means west of Callander, Ontario, they may build without any authority whatever.

Mr. FULTON: Up to six miles in length?

Hon. Mr. MARLER: No. The six mile limitation does not apply and they do not require permission of the Board of Transport Commissioners if they are building branches off their main line west of Callander. That is the result of the agreement between the Canadian Government and the Canadian Pacific Railway in the last century.

Mr. FULTON: East of Callander to build over six miles do they have to come before parliament?

Hon. Mr. MARLER: No. They merely have to go before the Board of Transport Commissioners.

Mr. GREEN: The question was over six miles.

Mr. FULTON: I am trying to establish a comparable position.

Hon. Mr. MARLER: If it is over six miles that would require parliamentary approval.

By Mr. Fulton:

Q. Apart from the position west of Callander, if this goes through the Canadian Pacific will be placed in a more competitive position?

Hon. Mr. MARLER: The positions will be not identical, but fairly comparable.

Mr. FULTON: But the C.P.R. requires a special Act, whereas the C.N.R. only requires a parliamentary vote.

Hon. Mr. MARLER: That is one distinction; the other is, I think, in one case order in council approval and in the other it is Board of Transport Commissioners approval. But the two railways are in a fairly comparable position.

Mr. FULTON: Look at subclause (2) of 22 which says:

> A copy of any plan and profile made in respect of any completed railway shall be deposited with the board.

Does that not necessitate obtaining the prior approval of the board?

Hon. Mr. MARLER: No.

The WITNESS: In respect of highways which are to be crossed by a projected line we do go to the board for approval. When the line is completed we deposit the plans and profiles pursuant to subclause (2); and that is an exact rewrite of that provision.

Mr. FULTON: The C.P.R. would have to go to the board first for the approval, whereas the C.N.R. would only have to deposit a plan of its line with the board after it is completed. Is that correct?

The WITNESS: With the qualification to which the minister referred.

Mr. FULTON: I am talking about lines east of Callander.

The CHAIRMAN: Shall clause 22 carry?

Mr. FULTON: No. I do not understand why one railway company is placed in a different position to another in regard to getting approval from the Board of Transport Commissioners.

Hon. Mr. MARLER: The Canadian National Railway is an instrument of the Crown, whereas the Canadian Pacific Railway is not.

Mr. FULTON: Yes, but the Canadian National Railway is owned by the public and if it had to come to parliament for approval or licence you might say we are substituting parliament for the board, but I understand they do not have to come to parliament and only have to obtain an order in council, whereas the C.P.R. has to go to the Board of Transport Commissioners and get approval. So the two railways are not in the same position.

Hon. Mr. MARLER: No, but they are in a comparable position.

Mr. FULTON: It seems to me you are enacting a new provision here. The six miles provision is new.

Hon. Mr. MARLER: We have been saying all along that it is new.

Mr. FULTON: What is the reason for placing the two railways in a different position? Why not say that the C.N.R. has to go to the Board of Transport Commissioners for approval?

Hon. Mr. MARLER: We do not think it should.

Mr. FULTON: Why not?

Hon. Mr. MARLER: Because I think it is an instrument of the Crown and I do not think it should have to go to another instrument of the Crown for approval.

Mr. FULTON: I do not accept that principle.

Hon. Mr. MARLER: It is a free country.

The CHAIRMAN: Shall the clause carry?

Mr. FULTON: No.

The CHAIRMAN: Shall the item carry?

Mr. FULTON: No.

The CHAIRMAN: Have you anything else to say?

Mr. FULTON: I have nothing further to say. I am prepared to put it to a vote.

The CHAIRMAN: All those in favour of clause 22 being carried, please signify by raising their right hands.

Mr. FULTON: I call for a poll of the committee on division.

The CHAIRMAN: On the show of hands I declare that clause 22 carries on division.

Let us call it 10.00 o'clock. The committee is now adjourned until 10.30 tomorrow morning.

FRIDAY, June 3, 1955.
10.30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum. I have been asked to announce that the adjournment will be at 1:00 o'clock, that the afternoon sitting at 3:30 will be in room 368 and this evening's sitting at 8:00 o'clock if we continue also, in room 368. I have been requested to adjourn then at 5:00 o'clock and if we cannot finish at 10:00 o'clock tonight to sit a little later tonight and finish up so that the men who are away from home can go home tomorrow.

We were on clause 23 but I think possibly we should finish 21 before we start on 23.

Mr. GREEN: Mr. Nowlan is interested in that and he is not here yet.

Hon. Mr. MARLER: I think we can leave 21 to a little later on in the morning when we have received the amendment.

Mr. GREEN: What about 18?

Hon. Mr. MARLER: Yes, and then we can go on with the other. I think copies will be distributed possibly in half an hour.

The CHAIRMAN: Clause 23.

Mr. GREEN: Mr. Chairman, I have a statement to make with regard to clause 23. This is the section which gives the power to the Canadian National Railways to make agreements with other railways, for example, pooling trains and agreements for amalgamation leaving out, of course, the Canadian Pacific Railway. The amalgamation of that system is expressly excluded. I am wondering whether or not it would be possible to write into this section some provision for the men of the Canadian National Railways who lose their jobs as a result of this arrangement. I point out that in section 17 of the Canadian National-Canadian Pacific Act which deals with cooperative measures, plans and arrangements by the Canadian National Railways and Canadian Pacific Railways there is a provision of the kind I have mentioned which reads as follows . . .

Hon. Mr. MARLER: What is that you are reading?

Mr. GREEN: Section 17.

Hon. Mr. MARLER: Of what?

Mr. GREEN: Of the Canadian National-Canadian Pacific Act. I am reading the last third of that section:

> And they are further directed that whenever they shall so agree they shall endeavour to provide through negotiations with the representatives of the employees affected as part of such measure, plan or arrangement or otherwise for a fair and reasonable apportionment between the employees of National Railways and Pacific Railways respectively such employment as may be incident to the operation of such measure, plan or arrangement.

That was a provision written into the law to help provide for the employees who were affected by a cooperative arrangement.

I bring this up because within the last two months we have had a situation develop on the west coast which in my judgment is extremely unfair to employees of the Canadian National. When the Grand Trunk Pacific put its main line through the terminus was Prince Rupert. That was a Grand Trunk port. It was supposed to be in competition with Vancouver and was to be built up as a regular Grand Trunk port and when the Canadian National Railways took over the Grand Trunk Pacific Railway, Prince Rupert, of course, became their port and has continued as such ever since.

In connection with the port there was a line of steamships running from Prince Rupert to Vancouver and that has been the case—oh, for it must be nearly fifty years and Prince Rupert has always been considered a Canadian National Railways port and the boat traffic up there was primarily Canadian National traffic.

Now, this year for some reason or other the Canadian National Railways officers in Montreal decided that they would turn over the year round operation of that route to a Canadian Pacific Railway ship. Mind you, there is some sort of a working agreement whereby this ship will do the business for both lines but the men of the Canadian National Railways who had been employed on their boat, the Prince Rupert, which is to be laid off, have been or some of them have been let out and others have had to take drops, for example, captains, dropping back to second and third officers and in fact that service, to me at least it appears, is being turned over to the Canadian Pacific Railways.

That was brought up in the Sessional Committee on Government Owned Railways and Shipping, and I refer to page 199 of the evidence where Mr. Donald Gordon was being questioned by Mr. Fulton and Mr. Gordon had this to say:

> ...it is not proper to call it a pool operation but a joint operation with the Canadian Pacific Railway...

In other words, it does not come under the pooling section of the Canadian National-Canadian Pacific Act; it is a separate deal and these men are not protected by the protection that is written into section 17 of the Canadian National-Canadian Pacific Act.

Then, Mr. Gordon had this to say at page 200:

> Under our agreement with the Canadian Pacific Railway the crew of the joint ship...

which, as I pointed out is a Canadian Pacific Railway ship...

> ...will be supplied by the Canadian Pacific.

Then again:

> Well, all I can say is that there are competitive services there where they could find work...

In other words, it is up to them to get out and find themselves a job...

> But it is a fact that it is a discontinuance of service and that does mean an end of employment. We have no other place for the crew of the Prince Rupert as such and they are being dealt with on reasonable notice and it is another indication that discontinuance of service does mean unemployment. I would remind you, however, that there are other steamship services on the B.C. coast.

Which statement means in fact that these men are simply being told to go out and try to find a job with another company.

> Mr. Fulton: Have the offices of your company been used in any way or have they been able to be of assistance in finding alternative employment?
>
> Mr. Gordon: Not specifically, no.

Now, I regret greatly in the first place that the Canadian National Railways has seen fit to drop that service. Mind you, they still have the Prince George which will carry on a cruise service during the summer months but the Canadian National Railways is now out of the all-year-round service in its own port of Prince Rupert and I think it is very unfair to those men some of whom have had thirty-five or thirty-six years of service with the Canadian National Railways—there is nobody any better qualified for operating ships on the west coast, they have had experience on that difficult run for all these years and yet they are now being forced to either get a new ship or take cuts which involve in some cases $100 or $200 a month and I submit that a section such as section 23 of this bill should have written into it some provision such as the one I have quoted from section 17 of the Canadian National-Canadian Pacific Act: otherwise Canadian National Railway employees will just be turned loose and expected to fend for themselves.

I don't know in what form the amendment should be written but I hope that the minister will give consideration to writing in an amendment of that kind. You cannot expect to maintain the high morale of the railway staff if they are not given protection of this kind. I repeat that what has happened on the west coast has been a severe jolt to the men employed on the Canadian National Railways ships and I think it is a change which has been very unfair to them.

Hon. Mr. MARLER: Of course, Mr. Chairman, with regard to employment generally speaking I have no doubt whatever that the management of the Canadian National Railways is just as reluctant to allow old employees to go as any one of the members of the committee would be if he were an employer of labour himself. But I do not think anybody can argue that merely because it is a national railway that we should keep on employees when unfortunately the traffic does not justify using their services.

Mr. GREEN: No, but the point is this. I read from Donald Gordon's evidence and the crew of this new ship is to be entirely a Canadian Pacific Railway crew. Now, why did not the agreement include a provision that half of the crew would be Canadian National Railway men? Why should they be simply thrown aside and the Canadian Pacific Railway men take the job?

Hon. Mr. MARLER: Well, I suppose Mr. Green, the reason was it was a Canadian Pacific Railway ship and I would think it was rather logical that they would go on using a Canadian Pacific Railway crew. I am not attempting to defend the Canadian Pacific Railway or say they have no right to keep

on their crew but I would think it was an understandable arrangement despite the fact that it does seem to produce some unfortunate results for the Canadian National Railway employees.

Mr. GREEN: But may I point out that the Canadian Pacific Railway ship is actually to be renamed and to be operated as a joint ship and yet there are not going to be any Canadian National Railway men in the crew.

Hon. Mr. MARLER: I would take it that changing the name of the ship does not altogether alter the fact that those who operated her in the past would probably be the ones most competent to operate her in the future. What I was going to say was that I do not think it is the most appropriate time to bring up this subject because I think if Mr. Green will examine clause 23 he will find it does not refer to the operation to which he has just been speaking but perhaps Mr. MacMillan can explain the purpose of clause 23.

Mr. N. J. MacMillan, Q.C., Vice-President and General Counsel, Canadian National Railways recalled:

Clause 23 I probably can best explain by giving you the references to the old statutes. Subsection (1) has no counterpart in the statute today and to achieve the rights of our subsidiary rail companies to run over the tracks of another railway company it has in the past been necessary to go through a formal running rights agreement; in other words, the vice-president of operations of a region has to sign an agreement twice on behalf of one company and again on behalf of the other company and we have to go through the machinery. The train is identical, the same train in every instance. Consequently we propose in subsection (1) that any of our own companies be given the right to run over the tracks of any other of our own companies by statute. That is the only new element in this entire clause 23 and subsection (2) is intended to be identical, the same as old section 23 together with the provisions of section 14 of chapter 11, 1928.

Subsection (3) to subsection (10) are just a re-write of section 23 of the Canadian National Railways Act, section 14 of chapter 11 of 1928 to which I referred and section 10 of chapter 32 of 1929. These subsections and for that matter all of clause 23 are intended to look after the amalgamation and the tidying up of the corporate household of the Canadian National. It is not extended to transactions between any other companies because you will notice that these agreements are restricted to those appearing in subsection (*a*) and (*b*). Subsection (*a*) between any two or more companies comprised in national railways, and (*b*) between any company comprised in National Railways and any company approved or designated for the purpose by the Governor-in-Council.

It is not contemplated that it would embrace an agreement between the Canadian Pacific and the Canadian National or other companies in the Canadian National.

By Mr. Green:

Q. No, it does not read that way Mr. MacMillan. It says:

> (2) (*b*) between any company comprised in National Railways and any company approved or designated for the purpose by the Governor--in-Council.

Now, the Governor-in-Council can designate the New York Central or any other line and obviously he might designate the Canadian Pacific Railway because in section 10 you put in an express provision that there shall be no amalgamation with the Canadian Pacific Railway and if that section 10 is

necessary at all it shows there was power under 2 (*b*) to bring about a compromise agreement with the Canadian Pacific Railway or obviously with any other outside company.—A. I must apologize, Mr. Green, the answer I gave you before was too general. The type of agreement with the Canadian Pacific Railway that I have in mind which was not contemplated in this section was your shipping agreement. That is a non-rail agreement and not affected by the provisions of this section at all. The section certainly is broad enough to encompass the Canadian Pacific if it is a designated company by the Governor in Council and agreements with the Canadian Pacific and the New York Central to use your example presumably could be completed in respect of the matters tabulated in subsection (3) other than the amalgamation in subsection (10).

Q. Well, the only railway with which you cannot amalgamate is the Canadian Pacific Railway. You can amalgamate with any other railway under this section.—A. Presumably if all other railways had been previously designated by the Governor in Council.

Q. As a matter of fact, subsection (5) reads:

> "a company approved or designated under paragraph (*b*) of subsection (2) has the power or capacity to enter into the agreement."

In other words this bill actually goes so far as to say if the Governor in Council designates the New York Central, then the New York Central are given power to go ahead with the agreement under subsection (5) are they not?—A. I would say they are and that would certainly be applicable to a corporation created by Canada but I don't know whether it gives power to a provincial company or an American company but in any event that is a provision of the law and it has been that way all through the years.

Q. Well, under this section this agreement with the Canadian Pacific Railway about the shipping service from Vancouver to Prince Rupert could be made, could it not? It would be under this section that you would get that authority? —A. I would doubt that, Mr. Green.

Q. Well, under what authority do you get it?—A. I would think that must flow from the general powers of the corporation to carry on its affairs. It is not a rail operation. That is the point I wish to make. There is no question but that the agreement was entered into.

Q. Well, for example, under (3) (*d*) it provides for making a half interest agreement. Isn't that wide enough to cover an agreement about ships?—A. Yes if it were a rail operation but the agreements discussed in this section and the sections to which reference is made are all in the Railway Act and the Railway Act, of course, covers the operation of the railway as a railway.

Q. But where does this section restrict this power to railways?—A. I don't know that it expressly does restrict it, but they are talking about railways and of the powers of the railway under the Railway Act.

Q. But it does say that in addition to (*d*) which does authorize the making of an agreement (*b*) authorizes

> The purchase, sale or leasing of the railway or the undertaking in whole or in part of either party to the Agreement.

Now, the shipping is part of the undertaking of both companies. Surely that section is wide enough to give power to make agreements of the type I have mentioned.—A. I don't think too much hinges on it, Mr. Green. I frankly do not think that agreement would be made under proposed clause 23 but I don't think it matters.

Q. Well, suppose you make an agreement about a railway. For example, suppose you make an agreement with the Pacific Great Eastern Railway in

British Columbia. That certainly would come under this clause 23, would it not?—A. Yes, I would say it would.

Q. Well, what protection have the Canadian National Railway employees got in the case of a joint operation of that kind?—A. I don't think they have any statutory protection. That question is very general. It is difficult to answer that question. You have said assuming they make an agreement with the Pacific Great Eastern. I don't know what kind of an agreement it is. If it was an agreement under which the Canadian National became committed to take over the Pacific Great Eastern the Pacific Great Eastern would have the problem of what to do with their employees. If it were the other way around and the Pacific Great Eastern took over a segment of the Canadian National or part of the undertaking the problem is in reverse. You would have to be a little more explicit but the fact is that I don't know of any statutory protection accruing to the employees of any railway other than under the provisions of the Canadian National-Canadian Pacific Act.

Q. When I started I quoted you the section of the Canadian National-Canadian Pacific Act which expressly provided that there must be protection given to the employees. Now, why could there not be a similar proviso written into clause 23?

Hon. Mr. MARLER: Why wasn't it written in in the first place, Mr. Green, because after all what we are dealing with here is legislation which was under consideration at the time the Canadian National-Canadian Pacific Act was passed.

Mr. GREEN: But at the time the Canadian Nationl-Canadian Pacific Act was passed the only employees affected would be the employees of the two companies. Here I have just quoted an actual example this year of a new pooling arrangement on the west coast in the course of which the Canadian National Railway employees have been left out in the cold.

Hon. Mr. MARLER: Do I understand, Mr. Green, that what you are proposing is that we should incorporate in this bill legislation which provides in effect either payment without work or necessarily a job for everybody who loses his job because of some process of amalgamation?

Mr. GREEN: No, I am not advocating that at all. I am saying that where there is a pooling arrangement that then the Canadian National Railway employees should get their fair share of the jobs under the new arrangement. That is all I am asking and I think it could be covered by writing a section into the bill of the type which is found in section 17 of the Canadian National-Canadian Pacific Act.

By Mr. Campbell:

Q. I would like to ask Mr. MacMillan what arrangement the Canadian National has with the Canadian Pacific regarding the use of lines? For instance, if the Canadian Pacific run over your lines they must do so by some kind of agreement. Are they allowed to pick up freight on your line and vice versa? —A. That type of operation is governed by an agreemnt appertaining to the particular line in question. There is no rigid pattern in these agreements. Some of the agreements we call "running rights agreements" in which the user railway as opposed to the owner has pure running rights over the trackage. They come on at the common point, occupy the rails of the owner to the end of the joint section and leave it without having any traffic rights whatever in the local territory. There are other running rights agreements in which the rights of the user range all the way from limited rights to acquire traffic to the other end of the scale where they have full rights to acquire traffic, to pick up, set out and do all the work that the owner possesses.

The latter type of agreement is frequently encountered in instances in which resort has been had to the provisions of the Canadian National-Canadian Pacific Act where at one time there were fully duplicate lines running in close proximity to one another and one or the other of these lines was abandoned and the two railways are now utilizing the one set of tracks.

Q. What I had in mind was, running out of the city of North Battleford the Canadian National has a line running north and the Canadian Pacific comes out over that line and then branches out to the northeast but on that piece of Canadian National line that they ran over there is a point called Hamlin and the trainmen have informed me they do not like the idea of the Canadian Pacific picking up carloads of freight at this point, Hamlin, but apparently they have an arrangement whereby they can do it.—A. Well, I am not familiar with that, I am sorry to say, but we would find if we looked into it that the agreement governing the operation of this trackage no doubt gives the Canadian Pacific Railway traffic rights at the point that you mention and it is there for a very good reason. They probably had another piece of track in some other location which they abandoned and came over and occupied our rails between those points and in the negotiations local rights were given at that one point.

The CHAIRMAN: Shall clause 23 carry?

Mr. NOWLAN: Mr. Chairman, before carrying it I think Mr. Green asked a perfectly reasonable question here. The minister said a few minutes ago that no one regretted laying off men more than the Canadian National and I am sure we all believe that. None of us think that the management of the Canadian National Railways are hard-hearted executives who love firing men but if they are going to negotiate any more agreements such as this it certainly would strengthen their hands in negotiations with the other railway if they were able to say: "We have a section in the Act which says we must protect our men to the best of our ability"—to protect the men to the extent of not getting paid for doing nothing but that they get their fair share of the jobs. We have that provision in the Canadian National-Canadian Pacific Act and I see no reason why it cannot be included in this bill and if there is any good reason why it should not be then the minister should expain it to us; otherwise I think the committee should ask that it be put in.

Mr. GREEN: I would like to read again the provision which is in the Canadian National-Canadian Pacific Act which says:

> They are further directed that whenever they shall so agree (that is whenever they reach a joint agreement) they shall endeavour to provide through negotiations with the representatives of the employees affected as part of such measure, plan, or arrangement or otherwise for a fair and reasonable apportionment...

Now, that is all that I am asking to be put in this bill—for a fair and reasonable apportionment as between the employees of the Canadian Pacific Railways and the National Railways in respect of any such measure, plan or arrangement.

What is suggested is that there be written into clause 23 a provision that where there is an agreement made with another company for pooling or for a half-interest that this provision should be put in that there shall be fair and reasonable apportionment of the jobs between the employees of the two companies that are going to be affected in the operation.

The minister is having two or three other clauses of the bill stand until later today and I would ask that he let this clause stand awhile just to see whether a subsection of that kind can be added.

Mr. LANGLOIS (*Gaspé*): Would you restrict your suggestion to the Canadian Pacific?

Mr. GREEN: Oh no, any other lines. You see, actually this agreement about the ships does not come under the Canadian National-Canadian Pacific Act at all. I submit it would come under this clause 23 of the present bill.

Mr. LANGLOIS (*Gaspé*): I was asking that because section 17 of the Canadian National-Canadian Pacific Act is restricted to agreements between the Canadian National and the Canadian Pacific.

Mr. GREEN: No, I think it should be the general principle that where the Canadian National Railways makes a pooling arrangement with another company that there should be a fair apportionment of the jobs between the employees of the companies concerned.

Hon. Mr. MARLER: Well, Mr. Chairman, I think we may think over what Mr. Green has said. It is agreeable to me that we let the article stand if that is the wish of the committee.

Agreed.

The CHAIRMAN: Clause 23 stands.

Clause 24. Shall clause 24 carry?

Mr. GREEN: Clause 24 is a new section, Mr. Chairman, and I think it would be helpful if Mr. MacMillan could explain why this new provision is necessary.

The WITNESS: I shall be delighted to do that. Clause 24 is inserted to provide a means by which empty charters at the end of our clean up program may be cancelled without the need of coming back to parliament for formal cancellation of them. Private act companies or special Act companies will continue in existence in empty form until such time as parliament has specifically cancelled them. The thought is that where we have no longer any need of a company, where the assets of that company have been transferred into the Canadian National or the Canadian Northern, in the process of consolidation we will leave outstanding the name of these companies and we would like to get rid of them. It is just a formal mechanical means by which they can be disposed of. With letters patent companies you all know when they have served their purpose we may go back to the companies branch of the Secretary of State and surrender the charter. There is no corresponding provision or corresponding machinery under which parliamentary charters may be surrendered.

The CHAIRMAN: Shall clause 24 carry?

Mr. GREEN: Clause 24 does not limit this power to companies that have parliamentary charters. As I read the clause it would provide for companies that have been incorporated under the Companies Act.

Hon. Mr. MARLER: It is already a very simple procedure for the letters patent company and you do not need these. If this clause were not passed there would be no difficulty in winding up letters patent companies. Therefore it primarily applies to companies incorporated by Act of parliament.

By Mr. Green:

Q. But is it the practice to wind up these letters patent companies merely by getting a declaration from the cabinet?—A. Our practice, Mr. Green, has always been to go back to the Secretary of State with the charters and I know of no reason to change it. I told you yesterday that we have one in our hands right now for surrender. It is a very simple procedure. Frankly, we do not have in mind that type of company at all because we have always been able to get rid of them and we are getting rid of them in that way. The companies to which I referred were the Special Act Companies.

The CHAIRMAN: Shall clause 24 carry?

Carried.

Clause 25?

By Mr. Green:

Q. Could we have an explanation of this?—A. This is just section 24 of the Canadian National Railways Act of 1919.

Q. How are you carrying on your express business now?—A. Under this power.

Q. But is it carried on by the Canadian National Railways Company or by a subsidiary?—A. Canadian National Railway Company.

Q. Where does Canadian National Express Company come into the picture? —A. Canadian National Express was a Special Act company created in 1902-3 in the name of the Canadian Northern Express Company. The name was changed sometime. It is inactive.

Q. You are not doing anything now?—A. No, the express business is conducted by the railway company.

By Mr. Montgomery:

Q. That would be one of the companies you would want to close out and get rid of?—A. Yes.

By Mr. Johnston (Bow River):

Q. As is expressed there "National Company" includes an express business and then if we look at the schedule we find out in part 1 there is the Canadian National Express Company and Canadian National Transfer Company and the operation of both of those companies which are now declared to be for the general advantage of Canada can be carried on anywhere where the operations of the National Company are carried on.—A. I don't know how broad their geographical powers are. I say this to you: the Canadian National Express was a special Act company created and I will get you the exact date, but it was 1902 or 1903. It has been inactive so far as I know for decades. The other one, the Canadian National Transfer Company, that was originally Canadian Northern Transfer Company, and likewise has been empty for at least 20 years. I have never known of an operation being conducted in the name of that company and they were both in the original Act of 1919 as companies in Canadian National Railways because they were both the property of the Canadian Northern Railway Company and subject to all of the declarations that flowed from that statute.

Q. You say, Mr. MacMillan, that the Canadian National Transfer Company was the old Canadian Northern Transfer Company, is that right?—A. Yes.

Q. And did the Canadian National Transfer Company then assume all the powers which were granted to the Canadian Northern Company?—A. I would think so, yes.

Q. Then you mentioned the Canadian National Express Company. That was the Canadian Northern Express Company?—A. Yes sir.

Q. And this company then, the Canadian National Express Company assumed all the powers that the old company had. It was just a change of name, in other words?—A. Yes.

Q. Assuming the same powers as the older company had?—A. Yes.

Q. And now these two then, the operations of either one of these can be carried on under the National Company?—A. Oh, no.

Q. Well, it says "The National Company may establish . . . "

Hon. Mr. MARLER: The National Company means the Canadian National Railway Company.

The WITNESS: It is the Railway Company.

Mr. JOHNSTON (*Bow River*): But it says "The National Company may establish, construct, or acquire, by purchase, lease, etc."

Hon. Mr. MARLER: You are on the wrong clause.

Mr. JOHNSTON (*Bow River*): "The National Company may carry on all business that is customarily carried on by express companies . . ."

Hon. Mr. MARLER: It already has that power, Mr. Johnston.

Mr. JOHNSTON (*Bow River*): It has that power and that is what I am trying to point out to you, Mr. Minister. You remember the other day when you said in your amendments you were going to have that excluded from the declaration but I pointed out to you then that even though it was excluded from the declaration since we had in part I of these two companies the Canadian National Express Company and the Canadian National Transfer Company that the railway would be able to carry on a transportation business which had been declared to the general advantage of Canada whether or not we took that one out of part III.

Hon. Mr. MARLER: Well, Mr. Johnston, isn't is rather obvious that if we had wished to do that we would not be bringing in a consolidation at this time of the very same provisions. If we wanted to do this surreptitiously the very thing we would do would be not to present the legislation at all. These companies have already been declared before for the general advantage of Canada. We are not asking for anything new. We are not asking for greater powers than the express company already has. This is to consolidate the position.

Mr. JOHNSTON (*Bow River*): Yes, I quite agree with you, Mr. Minister, in that regard but my concern was over the powers which the railway would have to start a transportation business.

If we take account of the Canadian Northern Transfer Company which is the old Canadian Northern Express company we find that according to the powers of their charter—and I am reading from the statutes of 1902, chapter 49, and this is what it says about that and you will see there, of course, I do not think you will disagree with it because you have already indicated that those powers are there and in section (7) it says:

> The company may for hire send, carry and transport from and to any place in Canada or elsewhere goods, wares, merchandise, packages, parcels and money and for such purposes may contract with all persons and companies and may construct or acquire by purchase, lease, charter or otherwise and may maintain, operate, sell, lease and otherwise dispose of boats, vessels, cars, vehicles and other conveniences and conveyances and may carry on generally the business of an express company.

And the same thing is true of the Canadian National Express Company.

I draw to your attention again that although we do remove those companies in part III from the declaration, that there is power here for the railway companies under part I of the schedule to operate any complete transportation system they wish. Now, you say well, they have never exercised it.

Hon. Mr. MARLER: No, I did not say that. All I am saying is that we are not changing the position of Canadian National with regard to the express business.

Mr. JOHNSTON (*Bow River*): Well, I think you did say—you will correct me, of course, if I am wrong—that if you had wanted to bring it in you could have done so through the back door method and you could have used this long ago.

Hon. Mr. MARLER: I think that is right.

Mr. JOHNSTON (*Bow River*): Would that be sufficient, though, to assure the committee that the railways have not got the power to carry on a full transportation business?

Hon. Mr. MARLER: But, Mr. Johnston, I am making no such statement as that at all. What we are talking about at the moment are the express companies and I say we are not asking for new powers with regard to the express business. What we are asking for is that we should have in this bill the same powers as we have at the present time. If you want to talk about highway transportation let us talk about that but we are now talking about this portion of the bill.

Mr. JOHNSTON (*Bow River*): In my judgment it does not make much difference whether we remove those sections in part III of Schedule 1 or not because the railway company can operate the same type of business under a different section.

Hon. Mr. MARLER: I think that would be so, Mr. Johnston, but I say the objections raised to the bill outside of the committee have been raised against not what is already in the powers of the Canadian National; it is clause 27 which has attracted the opposition.

Mr. JOHNSTON (*Bow River*): I quite agree with you there that that was the objection that the other parties raised but I wanted to go one step further and wanted to tell you that even though part III of the schedule was removed the same power could be kept on under another part of the Act.

The CHAIRMAN: Shall 25 carry?

Carried.

Clause 26.

By Mr. Montgomery:

Q. May we have an explanation of this as it is new?—A. Clause 26 is new. What we have attempted to do here is to give to the parent company the powers under telecommunications on a national basis, nationally and geographically, the powers presently possessed by one or more of the subsidiary companies. Several of the old railway companies have broad telecommunication powers. That phrase does not appear in their statutes because it had not been coined as of then but they do encompass the type of operation contemplated in the business of telecommunication.

All, as I told you in my opening remarks, almost all of these parent companies had telegraph companies, so called, possessing broad telecommunication powers. The powers expressed in clause 26 are intended to be a consolidation of all of those powers.

If you would like me to give you the references I would be delighted to do so. The Canadian National possesses its powers through amalgamation with the Grand Trunk which in turn obtained its powers through amalgamation with the Canada Atlantic.

Canadian Northern possesses its powers by charter, the Grand Trunk Pacific Railway Company has its, the Grand Trunk Pacific Branch Lines has its, the Canadian National Telegraph Company possesses its by virtue of amalgamation with the Grand Trunk Pacific Telegraph Company and then on top of that we have the Great Northwestern Telegraph Company. It has not as yet been amalgamated, but will be very shortly, and when they are all put together we think all the powers resulting will be that power expressed in clause 26.

By Mr. Montgomery:

Q. This clause is in substitution for all these others?—A. It is preparing the house so that they will be there when the amalgamations are completed.

The CHAIRMAN: Shall clause 26 carry?

Carried.

Clause 27, stands.

Clause 28?

By Mr. Green:

Q. Mr. MacMillan, would you explain 28? The side note indicates that it corresponds to section 12 of the Grand Trunk Railway Act, 1888. That section reads as follows:

> The company may own or hire and run steamships for carrying freight and passengers to and from any port with which their lines of railway connect.

That, of course, would apply very directly to the Prince Rupert to Vancouver run. Then it goes on:

> To and from any ports in Great Britain or Ireland.

That is the foundation section giving this authority apparently. I notice that you have expanded it quite a bit in your new section. Will you explain the changes?—A. The powers in clause 28 are fundamentally those now found in section 12 of the Grand Trunk Railway Act of 1888. Those powers passed to the Canadian National at the time of amalgamation in 1923.

Now, in addition to those present powers there are all the powers of the shipping companies referred to in Part I and II that are possessed by the system as a system today. What we are trying to do again as we did in the telecommunication system is to prepare the way for the future if and when all of those steamship companies are carried forward into the parent company.

By Mr. Nowlan:

Q. Is it under that section that you operate ferries like the Yarmouth-Bar Harbour ferries or those which are operated for the Canadian government?—A. The first part of your question was correct, but your example was not. The railway ferry operation would be conducted under these powers so far as they are regarded as a water operation. We know, of course, that some of our ferry operations by statute are regarded as rail operations. The Yarmouth-Bar Harbour ferry is not going to be operated by the Canadian National as a company facility but rather under an entrusting order in council in which we are the agency for operation.

By Mr. Green:

Q. Would that not come under this clause?—A. No, I don't think it does, Mr. Green. It is difficult to answer that question too. Although it is a water operation it is not our operation; it is a Crown operation. As I remember and understand it is a combination between Nova Scotia and Canada. We are the manager, we are the operators, but it is not ours, and if it was to be ours under the railway company, it would be pursuant to this section.

Mr. NOWLAN: Well, you must have some power somewhere in this Act to do it. Where would you get the power if you did not get it under that section?

Hon. Mr. MARLER: Is there a distinction to be made where the railway is acting as an entrusted agent of the Crown and a case where it is operating

under its own power? If it was its own operation it would operate under the section, but if it is acting as agent of the Crown, it would come under an entrusting order.

By Mr. Nowlan:

Q. But it must have some power under the charter to carry out the entrusting order?—A. The power to carry out the duties under an entrusting order in council are contained in clause 19.

By Mr. Johnston (Bow River):

Q. Under the present bill?—A. Yes.

By Mr. Green:

Q. Clause 19 is intended to cover ships?—A. It covers anything. You notice it does say:

> Any part of anything referred to paragraph (*a*) or any right or interest therein...

Q. Then, we have had evidence that the Canadian government railways are operated by the Canadian National Railways under an entrustment order. Apparently there are some ship services operated under entrustment orders?—A. Yes sir.

Q. Could we have a list of these services operated in that manner?

Hon. Mr. MARLER: Is it really material, Mr. Green?

Mr. GREEN: Yes, I think it is material. Just as I was promised a list yesterday of the Canadian government railways operated by the Canadian National Railways.

Hon. Mr. MARLER: My difficulty quite frankly, Mr. Green, is to see what the relevancy of that is to what we are talking of.

Mr. GREEN: Well, apparently clause 19 gives the company power to operate shipping which is entrusted by the government to the company?

Hon. Mr. MARLER: Yes.

Mr. GREEN: In just the same way as the Canadian government railways runs the Inter-Colonial, Newfoundland railway. Hudson's Bay Railway and the National Trans-Continental Railway which are entrusted to the Canadian National, and I think the committee would be entitled to know which shipping services are under that category. Apparently they are operating some as Canadian National Railway ships and others they are merely operating for the government.

Hon. Mr. MARLER: I would not hesitate to agree with you, Mr. Green, if we were in the select committee which is set up to examine the operations of the railway each year. But that has already been done. The committee has sat; we had two days on the affairs of the Canadian National Railways and the Canadian National West Indies Steamships, the committee had the opportunity of going into the whole operations of the Canadian National Railways and of the steamships company, and I must say that I do find it strange that we should be considering operations in this committee. If it was to illustrate, for example, what the effect of an entrusting order was, well, Mr. MacMillan has already said: "I will produce one" but I must say that I find it a little difficult to see why we should go through the whole gamut of operations carried out by the Canadian National Railways under entrusting orders so that we may pass clause 28.

Mr. GREEN: I am not intending to go through the whole gamut. I am asking for a list of shipping services entrusted to the Canadian National Railways and this committee is far more directly concerned with that question than the committee on government-owned railways and shipping, because we are asked here to deal with the section which actually gives the power to entrust the services to the Canadian National Railways. That is one of the questions which is directly the business of this committee.

For example, this very clause, 28, brings that question up now, and under clause 28 the company does not operate the shipping services which are entrusted to it, but only operates services it owns. Then, we are told we have to go back to clause 19 to find the power to operate services which are entrusted, and I think it is very material the committee should know just as much as possible. We can get it later in the day.

Hon. Mr. MARLER: I will see if it is possible to produce a list. I will let the committee know the situation.

Mr. GREEN: And what other types of services are entrusted as distinguished from government-owned in addition to railways and shipping services?

Hon. Mr. MARLER: Well, I think you are asking me for a great deal, Mr. Green. I am not going to say if I am going to be able to measure up to your request. However, we can look into it.

Mr. GREEN: But, Mr. MacMillan should know that off hand.

The WITNESS: I know a few, yes, but I would not say they were embracive. There is Ogden Point docks in Victoria. At one time that was entrusted when I was working in western Canada. Whether it is now I do not know. The telegraph and telephone services in Newfoundland is another example. Whether those two are the only ones, I would hesitate to say.

The CHAIRMAN: Does clause 28 carry?

Carried.

Clause 29.

The WITNESS: 29 is a consolidation of section 3 of the Grand Trunk Act in 1926.

By Mr. Green:

Q. This is the clause which deals with hotels. Is that the authority under which you operate all your hotels?—A. I think it is, Mr. Green, yes.

Q. For example, the parliamentary assistant tabled in the House the other day three orders in council concerning the operation of three hotels, one the Nova Scotian in Halifax, one the Newfoundland Hotel in St. John's and the Charlottetown Hotel in Charlottetown. Now, how are those hotels operated?—A. I am unfortunately not familiar with the orders in council to which you refer and consequently I cannot answer categorically regarding their content, but those three hotels were operated as a component of Canadian National hotel system. The Newfoundland Hotel you will well remember was the property of the commission government of Newfoundland at the time of Confederation and passed to Canada on Confederation. It was entrusted to the Canadian National under an entrusting order in council for management and operation. The exact status or condition with regard to the Charlottetown and Nova Scotian I cannot tell you at the moment. I would have to ascertain what it is. They are both in territories in which the railway is a government-owned railway, and it could well be that they were able to buy those hotels and if that is the case, I expect they are something of entrusting orders too.

Q. This order in council, for example, the one concerning the Charlottetown Hotel by order in council, P.C. 115 of 20th of January, 1923 being amended 1950, deleted from the entrustment to the Canadian National Railway Company

the property of Her Majesty in right of Canada as described in the schedule and (2) the said hotel property, including land, structures and appurtenances, be transferred by Letters Patent for a nominal consideration to the Hotel Company. What is the effect of that?—A. If I may see that I would be delighted to explain it to you. This no doubt is an implementation of the plan which I described for consolidation of all these hotels.

The Charlottetown Hotel obviously was an entrusted property which was a part of the Canadian government railway. The plan is, having created Canadian National Hotels Limited, to put all of these hotels into that company. It is the first step in a sorting out process, the principle we discussed, the task of the mail sorter who puts it into one bin first. It is a step being taken to consolidate all the hotels into Canadian National hotels. It is a question of clearing up the title, trying to get the management into understandable form. The other hotels are also operated differently or were operated differently originally. We are putting them together.

Q. This company Canadian National Hotels Limited does not appear to be in the schedule to the bill?—A. No sir, it is a Letters Patent company of recent incorporation.

Q. The plan is to put all these hotels into the ownership of that company?—A. Yes.

Q. The one with regard to the Newfoundland Hotel contains this provision, that the Newfoundland Hotel be placed under the management and control of the Minister of Transport. Now, how does the Minister of Transport get into the hotel business as distinct from the Canadian National Hotels Limited?—A. I do not know what is the reason for that, but I facetiously speculate that he is in the hotel business as a result of the act of Confederation of Newfoundland.

Q. He is going to be running a beer parlour.

Hon. Mr. MARLER: I have known businesses that were less profitable, Mr. Green.

Mr. GREEN: That particular order in council has three operating paragraphs, the order in council 4531 of 25th September, 1950 merely entrusts the Newfoundland Hotel to the railway for management, and operation.

Hon. Mr. MARLER: I understand the reason for that, Mr. Green, is that the entrusting order was in fact revoked in order that the hotel be placed under the management and control of the Minister of Transport, so that in turn he could recommend that it be sold to the hotel company.

Mr. GREEN: He has been fired as an operator of the hotel?

Hon. Mr. MARLER: At times I wonder if it should not be voluntary retirement.

The CHAIRMAN: Shall clause 29 carry?

Carried.

The CHAIRMAN: Now, I think a short recess for five minutes for the sake of the reporter who has been working very hard.

—Recess.

The CHAIRMAN: Order, gentlemen. We will go back to clause 18.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, yesterday I moved an amendment to clause 18, and I am now seeking permission from the committee to withdraw it, and move the following amendment instead. I will read this new amendment.

The CHAIRMAN: Agreed? Agreed.

Replace Section 18 by the following:

18 (1) The railway or other transportation works in Canada of the National Company and of every company mentioned or referred to in Part I or Part II of the First Schedule and of every company formed by any consolidation or amalgamation of any two or more of such companies are hereby declared to be works for the general advantage of Canada.

(2) The companies incorporated by subsection (2) of section 7 of the Canadian National-Canadian Pacific Act are hereby continued and such companies are in respect of all their affairs subject to this Act.

(3) For the purposes of this section, the expression "railway or other transportation works" does not include any works operated under the authority of section 27.

Hon. Mr. MARLER: Mr. Chairman, I wonder if I may perhaps give a few words of explanation. Yesterday in the committee when we came to discuss clause 18—Is Mr. Johnston here? I would particularly like to convince Mr. Johnston of the wisdom of what I have to say.

Mr. JOHNSTON (*Bow River*): I am sorry, Mr. Chairman, I thought you were going on with the other section.

Hon. Mr. MARLER: I thought we would go back to clause 18 so as to allow the representatives of the truck operators to spend as little further time with us as is necessary.

Well, Mr. Chairman, when we went over clause 18 one of the difficulties we ran into, it seemed to me, was that the expression "every company that is comprised in the Canadian National Railways" seemed to include other companies than those that we now had in mind and companies other than those listed in the schedule, and I think members of the committee and perhaps particularly Mr. Johnston feared that with the language as used in that expression "every company that is comprised in the Canadian National Railways" we might by some process of declaration such as was contemplated in section 2 (*c*), paragraph (3) or under clause 14 of the bill bring in some other company with broad powers and thereby bring into the works declared to be for the general advantage of Canada operations and works that we are not at the moment contemplating at all.

I did consider whether we might limit it by saying "every company that at the passing of this Act is comprised in the Canadian National Railways" and so on, and found that that gave rise to difficulty because of the possibility that some of these companies might hereafter be amalgamated, and might in consequence lose the benefit of the declaration that their works were for the general advantage of Canada, and consequently the first step that we have undertaken is to narrow the terms of the declaration, if I may so call the object of clause 18, to the works of the national company and of the various companies whose names appear in either Part I or Part II of the schedule, and I am sure members will realize right away that by referring to Part I and Part II we thereby make it unnecessary to exclude particularly the companies in Part III because the declaration will not extend to those companies as it has been drafted in paragraph (1).

Then, a further amendment has been made in the proposal that was submitted yesterday, and that is because the declaration is now contained in one section which begins with the words: "The railway or other transportation works", instead of in two separate sections as it is in the printed bill. In other words it is possible to compress the definition by merely saying that the expression "railway or other transportation works" does not include any works

operated under the authority of section 27, rather than having the double-barrelled expression used yesterday.

Now, I think all members of the committee—and by that I am not using it in the collective sense—I think the members of the committee were unanimous yesterday in agreeing that we should strive to make it perfectly clear that the operations that were carried on by the National company under clause 27 would be subject to the jurisdiction of the provincial regulating authorities.

It seemed to me on thinking the matter over that the operations that might be carried out by the National company or by any other railway company under clause 27 necessarily had to fall into one of two categories, either operations that were essentially inter-provincial because they crossed provincial boundaries or essentially intra-provincial because they were carried out wholly within the limits of a province.

So far as the inter-provincial operations are concerned I do not think there is any question but that automatically they fall under the provisions of the Motor Vehicle Transport Act under which, as the hon. members of the committee know, the provinces or such of the provinces as wish may exercise jurisdiction under the statute that was passed last year.

Now, so far as the operations that are strictly local are concerned, it seems to me that there is no doubt that under section 92 of the British North America Act, subsection 10, operations carried out entirely within the provinces would be local undertakings or "local works and undertakings", to use the words of the British North America Act, unless they fell under exceptions (*a*) or (*b*) or (*c*).

Now, (*a*) speaks of—

> Lines of Steam or other Ships, Railways, Canals, Telegraphs and other Works and Undertakings connecting the Province with any other or others of the Provinces or extending beyond the Limits of the Province:

That is clearly an extra-provincial operation or inter-provincial operation—

> (*b*) Lines of Steam Ships between the Province and any British or Foreign country:

That is clearly extra-provincial.

And then—

> (*c*) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

And if we come back to 18 we will find that clause 18 expressly excludes works carried out under clause 27 as being works for the general advantage of Canada.

I think the amendment before you makes that abundantly clear. I think the only point as to which there might be any dispute is the view expressed last evening by Mr. Coyne that the fact that these works were part of the operations of the railway made them necessarily works for the general advantage of Canada.

I have thought about that proposition since I spoke to Mr. Coyne last night, and the more I reflect on it, the more I am convinced that the argument that because they are integral parts of the railway they become works for the general advantage of Canada cannot be sustained in view of the expressed declaration that they are not to be works for the general advantage of Canada.

Now, it is my conviction after reflecting on the matter and going into the question very fully, that by excluding these works as being works for the general advantage of Canada we come back to this situation, first that the inter-provincial operations that may be carried out under clause 27 would be governed by the general law which in this particular case is the Motor Vehicle

Transport Act under which the provinces that wish to exercise jurisdiction may exercise jurisdiction, and second, the strictly provincial works which very clearly in my opinion under section 92, 10 are provincial matter and over which the provinces would exercise their jurisdiction.

Now, despite the fact that I have practised law for quite a long time, I have still a certain hankering for plain language, and I think that it would have been very good of you if we could have found some phrase that would have said: "Well, all these purposes will be carried out under provincial jurisdiction" or something of that kind. But after reflecting most carefully I came to the conclusion the most effective way of doing that is by stating expressly that these operations do not fall in the category of works for the general advantage of Canada, and that that is the proper legal way of giving the provinces jurisdiction over the proposed operations.

I must tell the members of the committee that since I made a statement in the House the other day, I have been very much aware of the fact that I had made the declaration, and I want the committee to feel that I am living up to the undertaking that I gave the House the other day, and that I have no desire whatever to evade the issue.

It occurred to me after Mr. MacMillan, Mr. Dreidger and I had looked at this amendment this morning that it would be very helpful to the committee to have Mr. Driedger of the Department of Justice explain more clearly than I have done what exactly is the effect of clause 18 which is now before the committee, and if the members of the committee are agreeable, I will be very glad if Mr. Driedger would give us his opinion on it.

The CHAIRMAN: Then, is it agreed that Mr. Langlois may withdraw the motion of yesterday and amend clause 18 and substitute therefor the new amendment he has read?

Agreed.

We will now hear from the Department of Justice.

Mr. E. A. DRIEDGER, Q.C. (*Assistant Deputy Minister of Justice*): Mr. Chairman and gentlemen, there has been a good deal of discussion here of some rather complicated legal points, if I may say so, and I hope that I am not going to be looked upon as a Solomon. I do not feel like one and I do not think I am one. I do not pretend that I am going to be able to answer all the legal questions that have been raised to your satisfaction. All I hope to be able to do is to offer a few comments that might assist the committee in its deliberations.

I think we must begin with this point: this is a statute that incorporates or continues a corporation and it confers upon that corporation certain corporate powers. Now, there is nothing unusual about that. Many companies are incorporated by or under a statute and the statute sets out the powers that the corporation has and I think it is axiomatic that the powers of a corporation must be exercised in accordance with the law. If, for example, a company is incorporated to carry on a trading business it must carry on the business in accordance with the law and so with every other company.

The question as to what law is applicable is not too easy to answer because there are many laws and there are many activities and every company, like every person, is in some respects subject to federal law, to provincial law, to municipal law, to the common law and so on.

Now, a company, for example, that is incorporated under the Companies Act, shall we say, to carry on a trucking business would find that it is subject to municipal law so far as the parking of vehicles is concerned, it would be subject to provincial law so far as operators' licences and other licences are concerned. If it bought any vehicles it would probably be subject to the provincial law of contracts, if it imported any vehicles it would be subject to federal law relating to importation and so on. You cannot say that a company

like that is subject entirely to federal law or that it is subject to provincial law only or that any one law exclusively applies. I don't think you can say that. I think we have to look at each activity and see what legislative authority has jurisdiction over that activity; in other words, who has jurisdiction over the subject-matter.

Now, coming down to clause 27 of this bill, the company is empowered to buy, sell or lease motor vehicles and maintain and operate them. That covers a very wide field of activity and so far as I have gathered from the discussions of the committee here they are not much concerned about the laws of parking vehicles or speed limits or laws of that kind. I think undoubtedly the company would be subject to provincial or municipal law and I do not think this committee has concerned itself with all the possible activities of a company operating motor vehicles.

It seems to me that the activity that was considered is what I might call the franchise, that is to say, the authority to operate a motor vehicle and the service between certain points and I believe that the committee is concerned about the application of either federal or provincial law to that activity; and if we confine ourselves to that, the question is then to what laws respecting that activity would this company be subject.

Now, here again I don't think there is any categorical answer. I don't think you can say that no federal laws apply or that no provincial laws apply. For example, if a company is incorporated to carry on a banking business, parliament has jurisdiction over banks and banking and the laws relating to banks and banking would, of course, be federal laws but there are provincial laws too with which the banks would have to comply. If you incorporated a trading company the law of contracts would probably be a provincial law.

In this case, however, I think it is clear that parliament does not have jurisdiction on the ground that it is by section 91 given express jurisdiction over motor vehicles, like it is over banking, navigation, shipping and so on. There is no provision in section 91 that gives parliament jurisdiction over the operation of motor vehicles as such. So that cannot be the ground of the exercise of jurisdiction by parliament.

Another possible ground is that it is a dominion company, a company incorporated by parliament, but that I do not think gives parliament complete jurisdiction over the activities of the company. You could, for example, incorporate under the Companies Act, under the Dominion Companies Act, a trading company to buy and sell goods, but the buying and selling of these goods would be subject to provincial law. The mere fact that it was incorporated under the Companies Act does not give parliament complete legislative jurisdiction over that activity, and likewise, here, the fact that this National Company is incorporated by Act of Parliament does not, in my opinion at least, confer upon parliament complete jurisdiction over its activities.

Another possibility is a declaration under section 92.10(c) of the British North America Act. If these works are declared to be for the general advantage of Canada then parliament has jurisdiction. That is in the printed bill but it is now intended to take away that declaration so that parliament does not have jurisdiction under 92.10(c).

There is a possibility, which was suggested yesterday, that because highway operations would form an integral part of railway operations and because railway operations extend beyond the limits of a province or connect two or more provinces the highway operations would also fall under that category and would be subject to parliament's jurisdiction. I am not prepared to go that far. We had an interesting example a few years ago. The Canadian Pacific Railway Company operates hotels as an integral part of its railway system and parliament undoubtedly has exclusive legislative jurisdiction over the operation of the railway, but the Privy Council held that the operation of the

hotels was subject to provincial law. Similarly here if the National Company operates a motor vehicle service the mere fact that it also operates a rail service that is within parliament's jurisdiction would not give, in my opinion, complete jurisdiction to parliament over the operation of the motor vehicles. I think you have to go a little farther than that, but I do think that some of these operations would be within parliament's jurisdiction in so far as they connect two or more provinces or in so far as they extend beyond the limits of the provinces, but if they do not do that I should think that they would be completely within the jurisdiction of the provinces.

The position then, I suggest, is that under 27 we would find that some of these operations would be subject to federal law and some would be subject to provincial law. How much of one kind and how much of the other I cannot say, but I think you would be in both camps; and the problem, briefly is how can we submit to provincial jurisdiction those works that under 27 are now under federal jurisdiction.

One might think a simple and easy way of doing that is to say "This is subject to provincial law" or that "provincial law applies to this," but unfortunately it happens to be one of those cases where apparently what can be simply said is in reality rather complicated.

If the law of a province, if a provincial statute, cannot constitutionally apply to certain operations then there is nothing that the provincial legislature or parliament can do to make that law apply. It cannot apply by its own terms and neither parliament nor the legislature of the province can amend it to make it apply; because constitutentionally it cannot apply. What may happen though is that parliament can with reference to a subject-matter within its own jurisdiction enact the same law that the province has enacted with reference to those things within its jurisdiction; but that is not accomplished by saying simply that the provincial law applies.

Now, I can give you two illustrations of that. The provincial workmen's compensation law does not and cannot apply to employment of civil servants by the government of Canada and if a provincial law purported to apply it would be ultra vires and I do not think that parliament could say simply that the Workmen's Compensation Act of Ontario applies to federal government employees. But what it has done in the Government Employees' Compensation Act is to say in effect that if an accident happens in circumstances under which compensation would be payable under the provincial law if the employer were some person other than the government of Canada then compensation is to be paid out of the Consolidated Revenue Fund of Canada, the compensation to be determined by the same board that determines it in provincial cases and the amount is to be the same. In that way parliament has in fact enacted as a federal law a law that is in the same terms as the provincial law.

We have another example in the labour laws. There again the legislature of the provinces cannot apply to federal works provincial labour statutes, and parliament cannot say that they do apply. What has happened is that the two jurisdictions have enacted what is in fact the same law, but the one is a provincial law and the other is a federal law. And there are other examples of the same type of legislation. We have an example on this subject because that is precisely what parliament did last year. Parliament did not give jurisdiction to the provinces and parliament did not make provincial law applicable to operations that the Privy Council in the Winner case declared were subject to parliament's jurisdiction. But what parilament did say was that where in any province a licence is required for any franchise—it does not say it in those terms—then the operator must have a licence under this Act, that is to say, the Motor Vehicle Transport Act and it confers authority on provincial boards to issue a licence and authorizes those boards to issue that licence

in the same terms as they would in the case of a provincial licence; in other words, it has enacted a federal law that is applicable to these operations but that federal law happens to be the same as the provincial law.

Now, when we come back to 27 and assume that some of those operations are under provincial jurisdiction and some under federal jurisdiction we get this result, that in so far as the operations are subject to provincial jurisdiction they are subject to provincial law and in so far as they are subject to federal jurisdiction they are subject to federal law and that federal law is the Motor Vehicles Transport Act, which has provided the same kind of a licensing system under the same conditions as exists under provincial law. So that parliament has in fact, if you like, by the Motor Vehicle Transport Act subjected carriers under parliament's jurisdiction to provincial law. That is the effect of it and if you combine the two, a provincial law plus a federal law you have in the result a provincial law applying to all the operations under clause 27.

The CHAIRMAN: Any questions anyone would like to ask?

Mr. GREEN: Do you attach any significance whatever to the provision in the proposed amendment to clause 27, which reads: "In conjunction with or in substitution for the railway services under their jurisdiction"?

Mr. DRIEDGER: I don't think I would.

Mr. GREEN: That would certainly appear to make this highway traffic part of the general railway system.

Mr. DRIEDGER: I don't think, sir, that you can make so general a proposition. I think you would have to look at the facts of each particular case. You might conceivably have a railway operating between points A and B in a province and then it is discontinued and you now put a bus line in there between A and B. I have great difficulty in seeing why that would not be a local work. I agree it was put there in substitution for what was a rail service. I think you would have to look at each operation and look at the facts in each case. I assume you would find that in some cases it was a local work and in others you would undoubtedly find that it was not a local work.

Mr. JOHNSTON (*Bow River*): Even if it was a local work and it came under section 92.10 (c), whether it was declared to be a work for the general advantage of Canada it would automatically whether it was a local work or not be put under federal jurisdiction entirely?

Mr. DRIEDGER: I thought I dealt with that before. If you apply 92.10(c) it is a federal work, but the proposal is that operations under 27 be removed from the declaration under 18.

Mr. JOHNSTON (*Bow River*): That would be so under the amendment, would it not?

Mr. DRIEDGER: Yes. So that would not apply.

Mr. GREEN: The Motor Vehicle Transport Act does not apply at all in the case of a service which is entirely within one province?

Mr. DRIEDGER: A local service no, it does not apply.

Mr. GREEN: It would not apply in a case of a trucking service replacing a line from Toronto to Windsor?

Hon. Mr. MARLER: Two points within a province, let us say.

Mr. GREEN: Is that correct?

Mr. DRIEDGER: Yes, the definition of local work there, I believe, is everything that is not an extra-provincial work and an extra-provincial work is defined as one connecting two provinces or extending beyond the limits of a province.

Mr. GREEN: Could there be a proviso written into Bill 351 which would make the Motor Vehicle Transport Act applicable to a work of the railways within one province?

Mr. DRIEDGER: That is the point I was trying to make, that if you did have a work that was a local work it would be completely outside parliament's jurisdiction. The only way in which parliament could have jurisdiction would be to declare it to be for the general advantage of Canada.

Mr. GREEN: Well, what harm would there be in writing in a provision to make that perfectly clear, that parliament did not intend to have any jurisdiction over the railway lines on that account?

Hon. Mr. MARLER: What could be clearer than saying it was not a work for the general advantage of Canada?

Mr. JOHNSTON (*Bow River*): That would be cleared up in the amendment, I take it, is that so?

Hon. Mr. MARLER: I think so.

Mr. GREEN: I am afraid that the sum and substance of this is that we have had a legal opinion and eventually this will have to go to the courts. The Supreme Court of Canada may have an entirely different opinion and we had evidence given last night that the subsidiary, Canadian National Transportation Limited, is actually asserting in Nova Scotia now that it is not subject to the provincial laws. What clearer indication can there be that right now that plan has been taken up by the railway company and we are asked to let this bill go through in its present form on the basis that we have had a legal opinion that the province can control this traffic?

Now, why not make it certain by writing something into the Act? The minister admitted last night his intention is to make the Canadian National Railways subject to these provincial boards and yet it is going to be left completely up in the air and at the same time the railway is actually challenging the jurisdiction in Nova Scotia.

Hon. Mr. MARLER: Mr. Green, I don't think that is a fair statement.

Mr. GREEN: If the evidence given last night was correct.

Hon. Mr. MARLER: I am not disputing the correctness of the evidence that was given because I am perfectly prepared to accept what Mr. Thompson has said, but what we are talking about at the moment is the amendment to clause 18 and the amendment to clause 18 expressly excludes anything that may be done under clause 27 from being a work for the general advantage of Canada. What could be clearer than that in order to show that the federal government is not attempting and in fact not only is not attempting but expressly says it is not exercising jurisdiction over something which falls under provincial jurisdiction?

Mr. GREEN: If Mr. Coyne's submission last night is correct—and the motor transport lines within a province are considered as part of the general railway system then there does not need to be a declaration by the dominion at all. The jurisdiction remains in the dominion and the provincial boards have no recourse at all.

If his argument last night was sound, and it certainly seems fairly reasonable, we have a conflicting opinion today but after all these are two opinions. Now, we are all agreed on the objective. I understood last night that everyone was in agreement that the railway must go to this provincial board.

Hon. Mr. MARLER: Everyone is agreed on that and it seems to me that what we are concerned with is the method of achieving that and all I can say is after having thought about it since last night I would like to know a better way of doing it than we are doing now.

Mr. DRIEDGER: Perhaps I might suggest this, Mr. Green. If these works, as has been suggested, fall within parliament's jurisdiction it can only be because they come within paragraph (a) of 92 (10) of the British North America Act; in other words, it can be only because they connect two or more provinces or extend beyond the limits of a province, but if that is so then it must, I should think, necessarily fall within the definition of extra-provincial transport under the Motor Vehicle Transport Act because that definition is in exactly the same terms.

Mr. GREEN: Section 92, 10 (*a*) reads as follows:

> Lines of Steam or other Ships, Railways, Canals, Telegraphs and other Works and Undertakings connecting the province with any other or others of the Provinces or extending beyond the Limits of the Province:

That can be read and I think was intended to be read as simply describing where a system extended beyond the bounds of a province, not that every single work of that Canadian National Railways system had to extend beyond the border of the province. Mr. Coyne's submission was that this right would be automatic, that being part of the railway system they automatically came under the dominion jurisdiction and therefore the provinces had no jurisdiction over it at all.

Mr. DRIEDGER: Have you the Motor Vehicle Transport Act there?

Mr. GREEN: Yes.

Mr. DRIEDGER: Would you read the definition of extra-provincial undertaking?

Mr. GREEN:

> 'Extra-provincial undertaking' means a work or undertaking for the transport of passengers or goods by motor vehicle, connecting a province with any other or others of the provinces or extending beyond the limits of a province.

Well, that is not the same definition because that is qualified by the words "by motor vehicle." The other definition in 92, 10 (*a*) of the British North America Act covered the whole system.

Mr. DRIEDGER: And, of course, the Motor Vehicle Transport Act deals only with vehicles so would have to be confined to that.

Mr. GREEN: Why can't an amendment be written into this Act to make it clear that the Motor Vehicle Transport Act does apply to these lines?

Hon. Mr. MARLER: Mr. Green, doesn't it automatically follow that that Act is going to apply to operations that come within its scope just as a whole series of other Acts are going to apply, for example, the Criminal Code so far as the drivers of these motor vehicles are concerned? It seems to me the idea of putting in the statute things named expressly is weakening rather than strengthening it.

Mr. DRIEDGER: If a provision like that were written into this section it would make sense only on the assumption that the opinion to which you referred is correct. I am not disputing it but you are assuming that the courts would hold that that was so, and if they held perchance that it is not so, and that some of these works are local and subject to provincial jurisdiction, then the additional words you have suggested would purport to legislate on things beyond parliament's jurisdiction and you would vitiate the whole section. Your amendment is based on the assumption that the opinion must be this way, but if the courts should hold that an undertaking connecting two points within a province does not fall under 92 (10), if they should hold that then by the amendment you suggest parliament would have assumed jurisdiction

over it, and would be purporting to bring into the Motor Vehicle Transport Act an operation that was purely provincial—which parliament could not do.

Mr. GREEN: Parliament is giving authority under this Act to a railway company.

Hon. Mr. MARLER: Giving a corporate power.

Mr. GREEN: Yes, giving a corporate power. Now, I think that parliament should make it clear what is meant and if you add the proviso at the end of this section 27 that the powers are subject to the provisions of the Motor Vehicle Transport Act, then you at least make it clear that parliament's intention was to make these lines subject to the provincial boards, and the actual result would be that the railway would not challenge that situation. It is the railway with which we are dealing, and if parliament tells the railway by writing something like that into the Act that the railway is subject to these boards, then I am certain the Canadian National Railways are not going to go to the courts to have the act upset. They will accept that as the actual situation, and I think something of that kind should be done so that the Canadian National Railways have it right in the Act that they will be subject to the provisions of that Motor Vehicle Transport Act. If you do not do that, the railway is free to refuse to go to the board or to take a stand such as it is taking now in Nova Scotia, and then somebody else has to start a case and take it through to the Supreme Court of Canada with all sorts of difficulties resulting; it does seem to me it would be very easy for us to make our position clear when we say we want this trucking business subject to these provincial boards. We are here to legislate—not here to rule on legal opinions, and we can certainly put in the legislation wording which makes it clear what we have in mind.

If that is so I think the Supreme Court of Canada would realize that that was the intention and would hesitate to rule a provision invalid, and the only people who could have it challenged and try to have it declared invalid would be the Canadian National Railway; I don't think in the face of an amendment like that, that the Canadian National Railways would go to the court and try to upset that section.

Hon. Mr. MARLER: Mr. Chairman, just one final word as far as I am concerned. It seemed to me last night when Mr. Fulton made a suggestion along those lines, a very attractive suggestion. The only reason which moved me, however, to discard was that I did not feel I was being honest with the committee by merely putting in the Motor Vehicle Transport Act when I think other legislation also applies.

The reason I did not wish to accept the suggestion which Mr. Coyne has made is that I believe the method we have followed in this amendment of section 18 is a more effective way of doing what we have in mind.

Mr. GREEN: It would still be in, you would still have the amendment to clause 18.

Hon. Mr. MARLER: But I must admit as a draftsman, I do not like putting in only one statute when I know there are other statutes that apply. As a matter of fact, the committee is free to decide on what it wishes obviously, but I do not feel that is the effective way of doing what we have in mind, and that is the reason I cannot recommend it to the committee. I feel that with this express declaration, the narrowing down first of all of these companies that are specifically mentioned in Part I or II and the fact that we say expressly: "The railways or transportation works carried out under section 27 are not to be considered works for the general advantage of Canada", nothing could be said more clearly which will give the provincial government jurisdiction under section 27, the interprovincial operations being subject to the Motor

Vehicle Transport Act and the provincial operations being subject to the provincial legislation which applies to them.

Mr. JONSTON (*Bow River*): Indeed the more I hear of this legal argument, the more confused I become, because it does seem to me the minister has put forward a very good case and he has tried to express that in this amendment, and I think it seems to take care of it, but on the other hand in view of the court's action in Nova Scotia now, I think Mr. Green has something worthwhile to consider.

Would it be all right, Mr. Chairman, if we heard the comments now of the trucking concerns and the bus concerns which gave us a hearing yesterday as to the suggestion that the minister has made and Mr. Green has made and if they are both satisfied that the minister's contention is right—

Hon. Mr. MARLER: I doubt if Mr. Coyne would recede from the position he took last night that we could do anything to change this.

Mr. COYNE: With all respect to the views that have been expressed this morning, my opinion remains the same as I expressed last night and I still do not think there is any method by which if you leave 27 in the Act you can bring the operations under provincial jurisdiction.

Mr. LANGLOIS (*Gaspé*): Then you do not accept Mr. Green's suggestion?

Mr. COYNE: Well, of course, if you adopt Mr. Green's suggestion you would not be in accordance with the opinion expressed by the Department of Justice. That would be adopting my interpretation of the Act, I would say.

Mr. JOHNSTON (*Bow River*): Then, Mr. Coyne, do you suggest that the amendment which Mr. Green has suggested would not meet your requirements either?

Mr. COYNE: I am really not quite sure just what Mr. Green's amendment was and the exact terms of it.

Mr. JOHNSTON (*Bow River*): It was very simply put and probably he could explain it himself. He was going to add in the amendment words to the effect that the Motor Vehicle Transport Act...

Mr. GREEN: What I had in mind, Mr. Coyne, was adding at the end of the proposed new section 27 such words as "subject to the provisions of the Motor Vehicle Transport Act".

Mr. COYNE: I do not think that would have any real effect. If any of these things are subject to that Act they are subject to it.

The CHAIRMAN: Perhaps Mr. Thompson can give us some opinion about this?

Mr. THOMPSON: Well, Mr. Chairman and gentlemen, we have discussed briefly the proposed amendment and we believe it is acceptable to us and I am prepared to withdraw the suggestion of last evening of amending 27. I think the expression of opinion on the part of the Department of Justice this morning is very clear cut and in my limited way I believe it is quite sound and I think our position is such that if perchance a court decision at a later date should be contrary to that opinion it would be reasonable for us to come to the government or the Department of Transport and solicit a subsequent amendment in order to put the situation in the position which the Minister of Transport has said he wishes it to be in. Therefore the amendment of this morning to 18 is acceptable to our association.

The CHAIRMAN: Shall the amendment to clause 18 carry?

Carried.

Shall clause 18 as amended carry?

Carried.

Shall the amendment to clause 27 carry?

Mr. GREEN: Mr. Chairman, on clause 27 we will have to reserve our position on that. We are not in a position to say we are for it or against it. We want to make clear we are reserving our rights on it.

Hon. Mr. MARLER: Quite frankly, Mr. Green, I am most anxious that the committee not feel that I am trying to escape the commitment I gave in the House the other day. I think the only difference that seems to exist between us is as to how effectively we achieve what seems to be the common purpose.

The CHAIRMAN: Shall clause 27 carry?

Mr. JOHNSTON (*Bow River*): We would like to reserve our rights on that clause too.

Hon. Mr. MARLER: Could we deal with clause 21, Mr. MacMillan.

The WITNESS: I would like to deal firstly with the second portion of your representations of last evening. They were not in the form of a question but rather you asked me to institute inquiries as to the action of the board of directors under that section. I have done so but I have not had the material furnished to me yet. It will be along.

In so far as the language of 27 is concerned, I told you that we had nothing in mind at all other than to recast it in accordance with the drafting of this Act in the bill . We are not wedded to the language in so far as the company is concerned. We are quite happy to have the language as it appears in the statute being repealed. It is not a matter of any consequence to us.

By Mr. Nowlan:

Q. Mr. Chairman, I am glad Mr. MacMillan is taking that position. I feel it is of some consequence but I am not going to give reasons for it at the moment but we think the intention is the same, that it is to perpetuate the situation as it existed before and I would hope that Mr. MacMillan could produce an amendment then which would restore those words as they were in the former section;—: "direct, provide and procure," rather than just direct and provide as it is today. I can give reasons but I do not want to take the time of this committee. I hope Mr. MacMillan is willing to amend that section accordingly. If a motion is necessary I would be very glad to move it. —A. It is not encumbent on me to make an amendment but I would be delighted to read you the section in the language in which it appears today and as far as the company is concerned that will be quite all right. The language incorporated in the law today is:

> The Board of Directors shall so direct, provide and procure that all freight destined for export by sea that is consigned within Canada for carriage to National Railways either at point of origin or between that and the sea shall, unless it has been by its shippers specifically routed otherwise, be exported through Canadian seaports.

Mr. NOWLAN: Mr. Chairman, is it open then to move that clause 21 of the bill be amended by reproducing section 14 (2) of the Canadian National-Canadian Pacific Act as the explanatory note said was intended to do? If so, I will make that motion.

Mr. JOHNSTON (*Bow River*): That would put clause 21 in the same words that Mr. MacMillan has read?

The WITNESS: That is right.

By Mr. Johnston (Bow River):

Q. And I understood Mr. MacMillan to say the company would have no objection to that?—A. None whatever. We think grammatically it leaves something to be desired but that is all.

Hon. Mr. MARLER: I have drafted the amendment for you, Mr. Nowlan.

Mr. NOWLAN: Thank you very much, sir.

Hon. Mr. MARLER: You might like to read it.

Mr. NOWLAN: Mr. Chairman, I move that clause 21 of the printed bill be deleted and the following substituted therefor:

> The Board of Directors shall so direct, provide and procure that all freight destined for export by sea that is consigned within Canada for carriage to National Railways either at point of origin or between that and the sea shall, unless it has been by its shippers specifically routed otherwise, be exported to Canadian seaports.

Hon. Mr. MARLER: I congratulate you on reading my writing.

Mr. NOWLAN: I have read Mr. Jim MacDonnell's so long that it is easy to read yours.

The CHAIRMAN: Anyone second that?

Mr. GREEN: I will second that. Mr. MacMillan was going to give us some information as to what steps the railways would actually take.

The WITNESS: I spoke of that at the beginning of my remarks.

Mr. GREEN: You have not got that yet?

The WITNESS: No.

The CHAIRMAN: Shall the amendment to clause 21 carry?

Carried.

Shall clause 21 as amended carry?

Carried.

Clause 30?

Carried.

Clause 31?

By Mr. Green:

Q. Could we have an explanation of 31?—A. Clause 31 is, as the note states, intended to convey what was in clause 26 of the Canadian National Railways Act. It is identical in context. It is the general corporate power of the company dealing with the acquisition of securities and equity holdings of other companies. It was in the original charter of incorporation. We have changed one word. The word "telecommunication" in line twenty, is in lieu of "telegraph" in the other section.

Q. The provision in the last three lines seems to be broad:

> ...or any business which in the opinion of the Board of Directors may be carried on in the interests of the National Company.

Can you give us any examples of what type of business is covered by that?—A. I don't really know of any at the moment but I can tell you a set of circumstances in which we do use those last three lines. These circumstances arise from the peculiar language of the section. We have not changed it. I would like to change it but if you will read it above you will notice that the power to acquire securities in the first place is conditional upon the approval of the Governor in Council and then it is in respect of shares of companies, transportation, navigation, terminal, telecommunication, and so on. Then you have to leave out to try to get what I am trying to explain to you and come down to "authorized to carry on any business incidental to the working of a railway..." so that the qualification of the companies in which we may invest or guarantee

as a company is that company being authorized to carry on any business incidental to the working of a railway. I don't think that was ever the intent at all. I think the intent was that the company would be limited to investments in these particular types of companies such as the terminal company—presumably a terminal elevator company, and it is very infrequently that a terminal elevator company would be restricted in its operations to the conduct of a business incidental to the working of a railway. It is not something that is normally inherent in an operation of that kind at all.

An electric power company, for example, it is awfully difficult to conceive that in the charter, be it by letters patent or special Act, that they would ever have gone on to say that the primary undertaking was to be carried on as incidental to the working of a railway.

Q. Well, to electrify the railway?—A. Yes, but to use that very example, assuming we electrify a segment of our railway and we desire to acquire the company that generated the electricity—under this section we cannot make that acquisition under the first part of the section but rather we would have to ask in the first instance that the board of directors determines that the operations of the Acme Power Company could be operations carried on in the interests of the railway and then go back to the Governor in Council for the authority. I don't think that was ever intended because it would be very awkward, but you could not find a more justifiable instance than the one you gave yourself where we have need of electricity, the electricity is generated locally and it is in the company's interest to buy that power company thereby having our own source of supply but we cannot do in the language which is now provided down to line 21. We have to go to lines 22, 23 and 24 and I would very much like to see the comma which appears between the words "electric" and "power" in line 20 removed and substitute for it the word "or" and then at the end of line 20 the word "company" so that it means that "with the approval of the Governor in Council, the railway may acquire" stocks, bonds, etc., in companies of the classes tabulated, because I think that surely must have been the intention in the beginning because it is a nullity really the way it stays unless we have resort to the last three lines.

The CHAIRMAN: Carried?

Carried.

We will now adjourn and meet at 3.30 this afternoon in room 368.

AFTERNOON SITTING

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. N. J. MacMillan, Q.C., Vice-President and General Counsel, Canadian National Railways, recalled:

The CHAIRMAN: We will go back to clause 31.

Hon. Mr. MARLER: After talking with Mr. MacMillan during the recess, I thought that we might go back to dealing with that and making the change to which the committee, I think, seemed agreeable when we came to deal with clause 31. It is a very small change in the wording which I think has the effect of clarifying the clause. Mr. MacMillan explained it fully, but perhaps he might just briefly explain the purpose of the amendment. I think a few copies of this have been distributed, it is just two words that are added: the word "or" between "electric" and "power", which you will find at the end of the sixth line, and the word "company" which is added as the first word of the next line. Perhaps, Mr. MacMillan might explain.

Mr. LANGLOIS (*Gaspé*): I move, seconded by Mr. MacNaught, that clause 31 be deleted and replaced by the following:

> 31. The National Company may, with the approval of the Governor in Council, acquire, hold, guarantee, pledge and dispose of shares in the capital stocks, bonds, notes, securities or other contractual obligations whatsoever of any railway company, or of any transportation, navigation, terminal, telecommunication, express, hotel, electric or power company or of any other company authorized to carry on any business incidental to the working of a railway, or any business which in the opinion of the board of directors may be carried on in the interests of the National Company.

Hon. Mr. MARLER: That is just the change that Mr. MacMillan discussed.

Mr. GREEN: Yes, I think it is a very good change.

The WITNESS: All we are doing is deleting a comma and inserting the word "or" and the word "company". In this other form it is virtually meaningless.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall clause 31 as amended carry?

Carried.

Then we come to clause 32.

By Mr. Green:

Q. That is an exact copy, is it, of section 29 of the C.N.R. Act?—A. No, it is not. There is one slight addition to it, and the addition is to be found in the last four lines beginning at line 29 with the word "and," the addition being "and whenever any such issue is arranged with and made by a trustee the National Company may guarantee payment of the principal and interest thereof and thereon." In the issuance of equipment certificates we very frequently have resort to a plan under which trustees function between the borrower and the loaner of the money. The obligations, of course, are primarily those of the Canadian National, and to sell them at all they have to be guaranteed. This provision permits of the company guaranteeing those obligations. It is the practice that has always been followed, but in the years gone by that guarantee has been given under the authority of what will now be clause 31. You will notice there that in the second line the National Company is authorized to guarantee, and then as we go on down towards the very end it says, "The bonds . . . . obligations" and so on, "or any business which in the opinion of the board of directors may be carried on in the interests of the National Company." We had to go through the fiction of having the board declare that this was a business carried on in the interests of the railway company, and the guarantee was given. This addition to clause 32 permtis us to do directly what has always been necessary in the issuance of equipment certificates; otherwise it is a complete rewrite of section 29 of the Canadian National Act.

The CHAIRMAN: Shall clause 32 carry?

Carried.

Clause 33?

The WITNESS: Clause 33 is identically the same in context as section 30 of the C.N.R. Act and it appertains to the depositing of mortgages. It is of little practical importance any more.

The CHAIRMAN: Shall clause 33 carry?

Carried.

Clause 34?

The WITNESS: Clause 34 is the old section 31 of the Canadian National Railways Act.

The CHAIRMAN: Shall clause 34 carry?

Carried.

Clause 35?

The WITNESS: Clause 35 is new in the legislation of the corporation, but it is taken from section 79 of the Financial Administration Act to which legislation we are subject, and we felt that it was intelligent and desirable to put it in the company's statute.

The CHAIRMAN: Shall clause 35 carry?

Carried.

Clause 36?

The WITNESS: Clause 36 is merely the context of section 8 of the Canadian National Railways Capital Revision Act, but since it dealt with the matter of continuing interest, again to make the scheme of things understandable, we put it in there.

Mr. HERRIDGE: Mr. MacMillan, what would be the reason for subclause (2):

> This section does not apply to such Canadian Government Railways as are designated by the Governor in Council.

The WITNESS: The Prince Edward Island car ferry is an example. That operation, you will remember, does not form part and parcel of the system as a corporate entity. The receipts from the operations accrue to government and the expenses of operation are paid by government.

Mr. GREEN: Are there any other Canadian government railway operations that are exempted?

Hon. Mr. MARLER: I think the Hudson Bay Railway is another example.

The WITNESS: Yes, that is of the same nature.

Hon. Mr. MARLER: I think that in all the other cases the deficit is met by parliamentary vote.

By Mr. Green:

Q. This means that these particular operations are not included in the deficit of the Canadian National Railways?—A. That is correct.

Hon. Mr. MARLER: I would judge, Mr. Green, that they are, for the most part, operations which are inherently likely to be unprofitable, as for example the ferry between Prince Edward Island and the mainland. It operates at a loss and has operated at a loss for a good many years simply because I think that the basis of operation is not one of profit but one of service.

By Mr. Green:

Q. Is the Newfoundland Railway one of them?—A. No, it is not. The results of operation of the Newfoundland Railway as such are included in the results of operation of the system. The Bar Harbour ferry is another example. It is in our management but the receipts do not go to the account of the Canadian National, nor do the expenses of operation.

Q. Is there any basis on which the distinction is made or is it merely an arbitrary rule?—A. I really could not tell you the answer to that. I know that some of these are that way.

Mr. MACNAUGHT: So far as the Prince Edward Island ferry service is concerned that is kept separate because that it is grounded in confederation. I think that is probably the real reason why there is a differentiation there.

Hon. Mr. MARLER: I think that probably the real distinction is that operations which are not naturally a part of the railway but which are likely to be inherently unprofitable are borne by the taxpayers at large rather than by the system.

Mr. GREEN: Of course the money all comes out of the same pocket.

Hon. Mr. MARLER: Yes. It is really just a matter of bookkeeping, but the results of the system are not being directly burdened with operations that are unprofitable.

Mr. LANGLOIS (*Gaspe*): In the case of the Bar Harbour ferry the money does not come from the same pocket. It is a joint operation by provincial and federal authorities.

The CHAIRMAN: Does clause 36 carry?

Carried.

Clause 37?

The WITNESS: This is the same as section 12 of the C.N.-C.P. Act with the exception that in subclause (2) you will notice the two ministers, the Minister of Transport and the Minister of Finance. The Minister of Finance is added, so that it is on the joint recommendation now of the two ministers.

By Mr. Green:

Q. Why was that added?—A. It was added on the request of the Department of Finance.

Q. Why is there this provision in subclause (4) that the income deficits of National Railways shall not be funded?—A. That is a provision that has been carried since either 1933 or 1936, but it is intended to prevent an annual deficit of the railway being the subject of a bond issue; so that if there was a deficit of $5 million the money is to be paid without a bond issue being used to raise the funds and thereby adding to the capital structure.

Q. Does that mean in effect that the income deficit has to be provided each year by parliament?—A. That is right.

The CHAIRMAN: Does clause 37 carry?

Carried.

Clause 38?

By Mr. Green:

Q. With regard to subclause 5, could you just explain that?—A. Yes. That is clearly intended to prevent the railway from selling bonds for capital purposes and utilizing the funds to satisfy a deficiency in operating revenue.

Q. There is provision for such procedure being followed if it is authorized by parliament?—A. There is no procedure, but of course parliament can authorize the railway to do anything.

Q. There is provision in the subclause for that to be done. Has there ever been a course of that kind followed?—A. You mean where we have used capital moneys for operations?

Q. Yes.—A. No, not to my knowledge. I cannot conceive of it being done.

Q. Parliament has never authorized that being done?—A. No.

The CHAIRMAN: Does clause 37 carry?

Carried.

Clause 38?

The WITNESS: Clause 38 is the same as section 13 of the C.N.-C.P. Act.

By Mr. Green:

Q. Why is that work not done by the Auditor General?—A. It never has been, Mr. Green, and it is the determination of parliament to do it in this way. It came into the statute I think in 1933.

Mr. MacNaught: It has been decided many times in the House.

Mr. Green: I know it has been raised in the House on different occasions, but what advantage is there to the railway in having it done by an outside auditor rather than by the Auditor General?

Mr. Langlois (*Gaspe*): This was explained in the House on many occasions, and I did explain it last year when the auditors bill was introduced. The firm of Touche and Company is appointed because of the fact that the Canadian National also operates branches in the United States and has interests in England and France, and it is considered desirable to appoint auditors having business connections in these countries. It is much easier and less expensive to do it in this way.

Mr. Herridge: One of the present ministers was very keen on it being done by the Auditor General at one time, was he not?

The Chairman: Does clause 38 carry?

Carried.

Clause 39?

The Witness: Clause 39 is a rewrite of sections 14 and 15 of the C.N.-C.P. Act 1936.

By Mr. Green:

Q. By the way, what is going to be left of this C.N.-C.P. Act?—A. Part 2.

Q. Just part 2?—A. Yes, all of Part 2. That is the portion of the Act that deals with the cooperation between the Canadian National and the Canadian Pacific. Part 1 was purely corporate to the Canadian National. Why it was put in as Part 1 and not by way of amendment of the 1919 statute has always been one of the great unsolved mysteries to me. However, that was the scheme, and what we are trying to do is to get rid of these parts and put them all in the same place. Part 2 will remain completely as it is.

Q. Has there been any attempt at extending these fields of cooperation between the two railways?—A. Yes, we work on it all the time. There is an active joint committee comprising officers of the Canadian National and the Canadian Pacific examining projects pretty well all the time, and reference is made to parliament each year of what has been done. It is under that provision that we work out these schemes for joint running rights to which I referred this morning.

Q. The pooling of trains is done under that?—A. The pooling of trains is done under this too, yes.

The Chairman: Shall clause 39 carry?

Carried.

Clause 40?

The Witness: Clause 40 is just a rewrite of section 16 of the C.N.-C.P. Act.

The Chairman: Shall clause 40 carry?

Carried.

Clause 41?

The Witness: Clause 41 is a power that was inserted in the Canadian National Railways Financing and Guarantee Act a couple of years ago, really

at my own personal request, because it fell to me to sign all the bonds, and I thought it was a terrific waste of time to spend hour after hour after hour signing bonds when they could be signed by facsimile.

The CHAIRMAN: Does clause 41 carry?

Carried.

Clause 42?

The WITNESS: Clause 42 is a corresponding provision relating to the representative of the Department of Finance.

The CHAIRMAN: Does clause 42 carry?

Carried.

Clause 43?

By Mr. Green:

Q. Clause 43 is the one having to do with the pension plan for the company?—A. Yes.

Q. Could you explain that?—A. Yes, I would be delighted to do that. In the first place I would like to correct the note on the right-hand side. It refers to chapter 14, but it should be 4 rather than 14. Clause 43 is a consolidation of the Canadian National Pension Act of 1907 as amended in 1929, together with provisions taken from chapter 65 of 1874, chapter 25 of 1878 and chapter 58 of 1888, all of which were Grand Trunk Railway statutes. The last three Grand Trunk statutes to which I referred are the basis for the additional language which is in the last clause of the first subsection, being "Insurance against accidents, sickness or death or other purposes." Otherwise it is a consolidation of the 1929 power. On the next page, subclause (2), there is a slight extension to the degree that this language would permit of employees of the Intercolonial Railway who belong to the Intercolonial Provident Fund gaining admittance to the regular pension plan of the Canadian National. Now it is not in any way intended or expressed in this section that the railway corporate pension funds be extended to these employees, but rather this will provide a means by which they may come in, if it is their wish to do so. I should point out to you that the two pension schemes are different and the benefits under the Intercolonial fund, in the opinion of most of the members are more favourable than the benefits under the Canadian National fund, but there are some who because of personal circumstances would prefer to be in the other fund. Our view is that since they are all Canadian National employees they ought to be able to transfer if they see fit.

Q. Can an employee of the Canadian National transfer to the Intercolonial fund?—A. No. That fund was closed to new members many years ago. I would hesitate to state the date categorically but it was some years ago, at least twenty years ago.

Q. Then what about subclause (4), "Existing plan continued"?—A. That is because you see the plan under which we are now operating was constituted under the Act of 1929, and we are going to repeal that statute. That is just for greater security. We do not want that plan cancelled because the Act on which it was based will have been repealed. It is just continuing the formalities of the 1929 statute.

Q. There have been some complaints about the size of some of these pensions, that is, with the decrease in the value of the dollar. Some of the smaller pensions have become of very little help, and from time to time suggestions have been made that there should be some change in the plan so that these pensions could be increased. Would that be possible under this section?—A. I do not think this section really changes anything in that respect. It is really just a consolidation of the powers that were there before.

Q. Subclause (3) says:

The directors may make rules and regulations for the due and efficient management, "administration and disposition of any fund or plan established under this section."

A. Yes. Well, that was there; they had that power before.

Q. Would that give them power to increase these small pensions?—A. I would think it would. I do not really know. I would have to examine it, but it would seem to. We would have to be a little more specific than we are to answer your question, but the directors do have power to revise the terms and conditions of the pension plan.

Q. That clause seemed to conflict with (4) which continues the existing plan?—A. Well, the plan itself provides that its terms and conditions may be revised and amended by the board of directors.

Q. That is by the board of directors of the Canadian National Railways? —A. Yes.

Q. So that in effect then the directors can increase those payments if they decide to do so?—A. They can certainly revise the plan. You see, when you revise the plan, it is possible that in some instances it could bring about an increase, but I should think there are other instances in which the reverse would be true. When rules are drawn they are drawn on a general basis, and how they will fit the individual is determined by his own circumstances. Length of service, his position at the time of retirement are the things that go into the determining of the pension whether he has contributed or not.

Q. Will the employees have any representation on the group of people who decide about the rules of the fund?—A. Not on the body making the rules, but the employees are represented on the Pension Board which is the board that administers the rules, and the employees have been consulted to my personal knowledge on every rule change for some years. We have sat with employee representatives and discussed rule changes.

By Mr. Herridge:

Q. Would some of those rule changes result from representations on the part of the employees?—A. I would not like to put it that way; I would like to put it more that rules have been changed as the result of deliberations between the company officers and the employees certainly.

Q. So their representations do have an effect in changing the rules?—A. Oh yes, we do not hold them at arms length. They are employees too.

By Mr. Green:

Q. There is no provision in this clause 43 for a pension board?—A. No, that is set up under the rules.

Q. That is set up under the rules?—A. Yes.

The CHAIRMAN: Shall 43 carry?

Carried.

Clause 44.

The WITNESS: Clause 44 is merely section 32 of the old Act and it provides for the bringing of actions against the company.

The CHAIRMAN: Shall 44 carry?

Carried.

Section 45?

By Mr. Green:

Q. Is 45 an exact repetition of the section under the Canadian National Railways Act?—A. It is intended to be identified in context. Whether the language is identical or not, I do not know. I would have to check it.

Q. Section 33, I notice, contains a reference to the management of the company—

> The Minister of Transport may appoint or direct a person to inquire into and report upon any matters or things relating to or affecting the Company or its works and undertakings, including its management and operation of the Government railways . . .

Now, those words do not appear in the new section and also it say:

> . . . or relating to or affecting any other company and the works and undertakings thereof, owned, controlled or operated by the company . . .

Now, those words too appear to have been left out?—A. Yes, but in lieu of those words these words have been put in, they being the context of section 71 of the Railway Act to which reference is made in the last line:

> The Minister, the Board, or the inspecting engineer, or person appointed under this Act to make any inquiry or report may
> (*a*) enter upon and inspect any place, building, or works, being the property or under the control of any company, the entry or inspection of which appears to it or him requisite;
> (*b*) inspect any works, structure, rolling stock or other property;
> (*c*) require the attendance of all such persons as it or he thinks fit to summon and examine and require answers or returns to such inquiries as it or he thinks fit to make;
> (*d*) require the production of all material, books, papers, plans, specifications, drawings and documents; and
> (*e*) administer oaths, affirmations or declarations; and has the like power in summoning witnesses and enforcing their attendance, and compelling them to give evidence and produce books, papers or things that they are required to produce, as is vested in any court in civil cases.

I imagine it was felt that that would be broader than what we had before.

Q. That does not cover "including its management" and "operation of the government railways"?—A. But it does by reference to section 15 of the statute, because section 71 of the Railway Act which I have just read is not one of the sections which have been excluded from reference to the government railways.

Mr. HERRIDGE: How frequently would the minister exercise that power?

Hon. Mr. MARLER: This minister has never exercised it.

By Mr. Green:

Q. Has that power ever been exercised?—A. I cannot answer that, Mr. Green. To my knowledge it has never been exercised.

The CHAIRMAN: Shall 45 carry?

Carried.

Shall 46 carry.

The WITNESS: 46 is a new section. It is merely to make sure that what was done under the statues which are being repealed shall continue to be valid and subsisting. We would not wish any action we had legally taken under the old statute to become illegal because the statute on which we had based our authority had disappeared.

By Mr. Green:

Q. Well, is there not some chance of conflict there? Unless you are very careful to rescind all the old regulations and by-laws and orders as you make new ones, will there not be some difficulty?—A. The risk of doing what we are trying to do here is that we have missed something, and all we can do is to give you my assurance that we have done our level best not to, because we

might find ourselves in difficulty if we have slipped, and in that case, I would have to ask your indulgence to hear me again on another occasion, but we think we have looked after what has to be looked after.

The CHAIRMAN: Does 46 carry?

Carried.

Clause 46?

Carried.

The CHAIRMAN: We will revert now to 23.

Hon. Mr. MARLER: Perhaps we might deal with the schedules.

The CHAIRMAN: Shall the first schedule carry?

By Mr. Green:

Q. I notice just as a matter of interest, what is the position of this Canadian National Railways (France)?—A. That is a company that was organized in France because we have a traffic office there and we still own the Hotel Scribe, and they have some legislation in France which requires a domestic corporation. I think almost everybody doing business in France has a French company. That is all it is.

Q. What are these two companies the Prince George Limited and the Prince Rupert Limited?—A. In the old days it was the practice of the Grand Trunk and Canadian Northern to have a company incorporated for every ship they owned, and which was floating, so that the Prince William was owned by the Prince William Limited, the Prince David by the Prince David Limited. There were dozens and dozens of these. We have surrendered them, and we are down now to these two, those being the remnant of the shipping companies owned by the Grand Trunk Pacific Company on the west coast and they will disappear, because that is not the modern practice any more.

Q. But the Prince George was built just a few years ago?—A. That was the old company. We just changed the name to Prince George. We had a Prince George years ago, if you remember.

Q. The present Prince George, is she owned by this company?—A. I doubt it very much, but I would not wish to say definitely.

The CHAIRMAN: Shall the first schedule carry?

Carried.

Shall the second schedule carry?

Carried.

Hon. Mr. MARLER: I think Mr. MacMillan wants to make one or two remarks on the second schedule about some of the legislation being repealed.

The WITNESS: No, it was more that in the consolidation there have been a few small sections deleted and I thought that I should tell you that and very quickly run through them. I would not want anyone to think that we had left them out, and had omitted to point them out to you.

I do not suppose you are really interested in much detail, but we have dropped all of section 2(c) of the Canadian National Railway Act which defines the Canadian Northern, because at no place else in the legislation does the Canadian Northern appear, and it was completely superfluous.

We likewise dropped the definition of Canadian Northern System formerly appearing in 2(d) because at no place else is reference made to the Canadian Northern System.

Then, under section 3(1) of the Canadian National Act there was provision regarding the number of the directors, but since that provision was completely obsolete by the provisions of the incorporation of 1936, we have dropped it too. The context of it is too general in this bill at the point we mention.

Then, section 4(4) of the Canadian National Railways again provided for an annual meeting, but that, of course, has no practical value because of the provisions of the Canadian National-Canadian Pacific Act, and the procedure under which a report is made to a parliamentary committee annually by the company.

Section 14 contained financial provisions respecting the Canadian government railways which were substituted by the provisions of the Canadian National Railways Capital Revision Act. These latter provisions have been retained in the bill as clause 37.

Section 21 is in respect of municipal street crossings, and that is a matter that is governed by section 258 of the Railway Act and administered by the Board of Transport Commissioners.

By Mr. Green:

Q. Why was that in the old Act, Mr. MacMillan?—A. I do not really know, Mr. Green. I do not know why several of these things were in the old Act.

Q. Which section of the Railway Act?—A. 258.

Q. Section 21, of course, is for the protection of the municipalities. Are their rights then as broad in section 258 of the Railway Act?—A. I think they are. I think the board is interested in this instance primarily in the rights of the people at the crossings. This section to my knowledge, has never been utilized. The applications and the procedures taken are always taken under the other section, the section of the Railway Act.

Q. Well, under section 21 of the Canadian National Railway Act you cannot build a railway along a municipal road without the consent of the municipality, is that not right?—A. Yes, that is right.

Q. But under the Railway Act, the Board of Transport Commissioners can force the municipality to allow that railway to be built, can it not?—A. Well, you may be correct. Have you got the section there by any chance?

Q. Yes.—A. Do you notice it goes on to provide for compensation and the consent and then:

> Unless the company has first obtained the consent through by-law of the corporation of such city or incorporated town.

Q. Well, the municipality has some protection, has it not, under section 21 of the Canadian National Railway Act, because there there is an outright prohibition of putting your railway along a road in a municipality without the consent of the municipality. Under the Railway Act the Board of Transport Commissioners can force the municipality to allow the railway to be put along the road.

Mr. HERRIDGE: Why should not the corporation suffer from the same inconveniences as the individual?

Hon. Mr. MARLER: I find it difficult, Mr. Green, to see how section 258 enables the railway, "without the consent of the municipality to build upon, along or across any highway," because after saying that the railway may, if leave is first obtained from the board it goes on to say that "The board shall not grant leave to any company" and so on "Until the company has first obtained the consent furnished by by-law of the municipal authority of such city, or incorporated town."

I might say also that when my attention was drawn earlier to the fact that this article had not been included in the consolidation I did take the trouble to look up the Railway Act and I thought it was covered by section 258.

By Mr. Green:

Q. Well, if the coverage is the same, of course, there is no objection.—A. In any event this section 258 is the section that is applicable to every railway in Canada.

Q. That is the one in use in actual practice?—A. In actual practice this is the one under which the crossings are arranged. It is of general application to every railway in the country.

The CHAIRMAN: Carried.

The WITNESS: We deleted section 22 because it was felt that it had been repealed by inference by section 2 (3) of the Canadian National-Canadian Pacific Act and that is the question of the power to abandon the lines. The power is clearly expressed in the statute.

By Mr. Green:

Q. How do you abandon the lines now?—A. By application to the Board of Transport Commissioners followed by representations by those in opposition and hearings and notices—a very protracted procedure.

Q. But under what law?—A. It is under the Railway Act. There is a definite prohibition against it in the Railway Act. There is likewise a prohibition against it if the Canadian National-Canadian Pacific Act in section 2 (3) and this provision provides:

> notwithstanding anything in this Act or in any other Act any railway may abandon the operation of any line of railway with the approval of the Board of Transport Commissioners for Canada and no railway company shall abandon the operation of any line of railway without such approval.

That continues to be the law.

By Mr. Herridge:

Q. And that is the same with respect to a telegraph line?—A. No, that applies to railways. I would have to look it up.

By Mr. Green:

Q. That is the Railway Act you are reading from?—A. No, that was the Canadian National-Canadian Pacific Act subsection (3) of section 2.

Q. Then section 22 of the Canadian National Railway Act provides for the protection of security holders. Is that provided by law in the other statutes? I suppose it would not be applicable now anywhere but on any of the Canadian National Railway lines?—A. Well, there are six issues outstanding to which I have referred in which that could arise but that is a little different because that goes to the root of the railway's corporate relationship. The other one is the physical abandonment and we cannot abandon the operation of a line of railway irrespective of the wishes of the security holders without the prior consent of the Board of Transport Commissioners.

Then, from the Canadian National-Canadian Pacific Act, part I, we have deleted subsection (2) of section 4 which had reference to the appointment of the directors and have carried forward into the consolidation those provisions of the Canadian National Act of 1919.

Section 6, subsections (1), (2) and (3), dealt with the appointment of the original directors and, of course, that has become obsolete with the expiration of the first three years of the existence of the company. So there were no need to carry those forward.

Then, section 8 (2) dealt with the powers of the board of directors appointed immediately after assent to that legislation and it spoke in relation to those individuals of 1936, and, of course, has been rendered obsolete by the consolidation and the passage of time.

Then, in 10 (5) there was a statement to the effect that the then chief operating officer of the railway was to be the acting president. Of course, that became obsolete too with the passage of time.

Then, in 11 (3) there was a provision dealing with the board of directors deliberating by way of a written minute and it was considered that that need not be carried forward because of the authority for the appointment of an executive committee which had always existed.

Those are all of the deletions.

The CHAIRMAN: Shall we go back to 23?

Hon. Mr. MARLER: Well, Mr. Chairman, as far as I am concerned I find it very difficult to see how I can add to clause 23 a provision like that which Mr. Green referred to this morning which in fact—I suppose Mr. Green has not drafted any amendment but I take it that what he would like to see is that the clause should be amended so that it would provide expressly that in the event of an amalgamation or purchase, sale or lease of a railway or of an undertaking or of the making of half interest agreements or the granting of privileges for joint operation or joint ownership of any undertaking that there shall be a fair apportionment of employees as between the two enterprises.

I don't really believe that that is any more than a rule of conduct. I don't really think it is an enforceable provision and quite candidly I don't think it will add anything to the bill to put it in.

Quite obviously Mr. Green might have other views about it but I don't really believe I should accept the amendment to the article in that sense. I don't want to say that as if I would never change my mind on the subject because I don't believe in taking such attitudes as that but if Mr. Green can give me something a little more precise than what I have I will be glad to look at it.

Mr. GREEN: The same as the words in section 17 of the Canadian National -Canadian Pacific Act.

Hon. Mr. MARLER: I cannot help thinking these provisions are inclined to be no more than the expression of a pious hope.

Mr. GREEN: Well, the article dealing with shipping through Canadian ports is in that category too.

Hon. Mr. MARLER: Yes, I suppose it is. I suppose we have all been legislating in one field or another long enough to know that one puts into statutes or other enactments things that really amount to a pious hope because they are not really enforceable. Personally, I have not been a believer in putting in ineffective or ineffectual terms unless you are setting out a whole line of policy. I have drafted by-laws in that form. I was not very enthusiastic about it. I do not think anyone can deal competently with it or affect what actually takes place very materially. I would personally prefer to leave the management of the railway in a position to manage its affairs and to carry on any such amalgamation as is contemplated here in the way it thinks best in the interests of the company and I firmly believe that the management is anxious to treat its employees well and to conserve for them the maximum amount of employment.

By Mr. Johnston (Bow River):

Q. Has there been a case where there was an amalgamation where one company that was taking over just fired everyone of the other company and let them go?—A. I don't know of any. I can't answer beyond that. I know of instances where we have taken property over and we have assimilated employees.

Q. It is the general practice, isn't it?—A. Yes, we acquired the Temiscouata Railway. Those employees were generally merged in with ours. There are difficulties arising sometimes because of the terms and conditions of the organization, sometimes that places the management in a rather difficult position but generally they came over.

Again when the line from Quebec City to roughly Ste. Anne de Beaupre—it was the Quebec Railway—when we acquired that those employees were shuffled in with the railway employees.

The same thing was true when the Harbours Board Railway in Vancouver was taken over by the Canadian National. The general rule being that they came in and I think I can think of others. But the corporate policy, of course, is to try and do these things because we are just as conscious as anybody is of the dislocation caused by a cessation of employment.

Mr. JOHNSTON (*Bow River*): I can see a case like the case mentioned a while ago where companies were being amalgamated that you just could not find jobs for everybody and there may be the odd case where you would have to let a few go. Whether you like to keep them or not you will have to let them go.

Hon. Mr. MARLER: I think often that is one of the most disturbing consequences of some of our modern improvements. Nobody would want to stop a railway or other undertakings from progressing but sometimes progress does cost people their jobs. We all can think of lots of examples where people have lost their jobs simply because there was no longer any need for them.

Mr. GREEN: That was not the case I mentioned. In the case I mentioned, the Canadian National made a deal with the Canadian Pacific in which the Canadian Pacific ship has taken over a run of the Canadian National. The Canadian National did not make any provision for its own crew which was displaced by that agreement.

Hon. Mr. MARLER: But if we push that a little bit further it was merely a question of, let us say, of whether half the crew should be struck off the Canadian National payroll or whether it should be struck off the Canadian Pacific payroll. There were not going to be any more people to run the ship whether it was operated by the Canadian National or the Canadian Pacific or jointly.

Mr. BYRNE: After all, aren't most of the amalgamations the other way? The Canadian National Railway is an amalgamation of many different companies and the Canadian National Railway employs these other employees as time goes along. Give us one instance dreamed up where there is no risk of raising an international issue.

Mr. GREEN: No one is raising an international issue at all, but there is no reason why the Canadian National Railways cannot keep running that ship but it has been the Canadian Pacific which has taken it over.

Mr. BYRNE: It is not our position to determine that.

Mr. GREEN: We are only dealing with the Canadian National. They only had two ships and they laid off one. The Canadian Pacific had perhaps a dozen. There is far more chance to get work.

Mr. BYRNE: We are dealing as legislators for all people and we should feel just as sorry for Canadian Pacific employees as Canadian National employees.

Mr. GREEN: But half of the men of the Canadian National should have a chance to get on the combined ship and they were put out in the cold.

Hon. Mr. MARLER: It would be interesting to know what the present crew would think of that proposition.

Mr. GREEN: I can't help that. Surely the Canadian National Railways can look after its own employees.

Hon. Mr. MARLER: I would not wish to leave with the committee the impression it was not looking after its employees but I would say that so far we have dealt with only one aspect of the question and I would hesitate to express any opinion until I knew what all the facts were.

Mr. GREEN: The Canadian National Railways should not have given up the run but kept it themselves.

Hon. Mr. MARLER: And lost more money?

Mr. GREEN: No, the northern part of British Columbia is opening up every day—more big developments going in. It is far better now than it ever was.

Hon. Mr. MARLER: I think, Mr. Green, you ought to sit around when the question of the maritime subsidies comes up and see what the views of the ship operators are at that time.

Mr. GREEN: Here is the member from Cariboo. He can tell you about it.

Mr. LEBOE: I think the development in the north country is going to go on.

Hon. Mr. MARLER: I think if we stop running aeroplanes to Victoria from Vancouver the ships would have a chance.

Mr. GREEN: You announced today that you were paying a subsidy to build a new railway into northern British Columbia. We are doing that with one hand and taking off your ships with the other.

Hon. Mr. MARLER: Well, I think it is clear nobody is going to lose money on the Pacific Great Eastern unless it is the government of British Columbia.

The CHAIRMAN: Does clause 23 carry?

Hon. Mr. MARLER: Mr. MacMillan, I think, has one or two statements which he was asked by the committee to make.

The WITNESS: Mr. Fulton asked yesterday that we tender a copy or a a duplicate of entrusting order in council and I am tendering a copy of order in council P.C. 115 passed on 20th of January, 1923. That was the first order in council and it is on that basis that all the others have been predicated.

Hon. Mr. MARLER: I take it that that might be transcribed in the minutes of the committee.

Mr. LANGLOIS: I would so move, Mr. Chairman.

P.C. 115

Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 20th January, 1923.

The Committee of the Privy Council have had before them a report, dated 18th January, 1923, from the Acting Minister of Railways and Canals, stating that under the "Act to incorporate the Canadian National Railway Company and Respecting Canadian National Railways" (being Chapter 13 of the Statutes of 1919) hereinafter called the said Act, authority was given by Section 11 to the Governor in Council from time to time by Order in Council to entrust to the Canadian National Railway Company—

> The management and operation of any lines of railway or parts thereof and any property or works of whatsoever description, or interests therein, and any powers, rights or privileges over or with respect to any railways, properties or works, or interests therein, which may be from time to time vested in or owned, controlled or occupied by His Majesty, or such part or parts thereof, or rights or interests therein, as may be designated in any Order in Council, upon such terms and subject to such regulations and conditions as the Governor in Council may from time to time decide; such management and operation to continue during the pleasure of the Governor in Council and to be subject to termination or variation from time to time in whole or in part by the Governor in Council.

That the Canadian National Railway Company, hereinafter called the Company, has been brought into existence by virtue of an Order in Council passed on the 4th day of October, 1922, whereby certain persons were nominated directors of the Company pursuant to the provisions of Section 1 of the said Act.

That the powers of General Manager in respect of the Canadian Government Railways were heretofore entrusted by Order in Council, dated 20th November, 1918, to certain persons from time to time constituting the Board of the Canadian Northern Railway Company, and that the powers of General Manager in respect of the Canadian Government Railways so entrusted are now being exercised by the persons who constitute the Board of Directors of the Canadian National Railway Company.

That it is expedient to terminate the authority of the said persons to act as General Manager of the Canadian Government Railways and to entrust in lieu thereof the management and operation of the said railways to the Company, pursuant to the provisions of Section 11 of the said Act as above in part mentioned. The effect of said change will be to make applicable to the management and operation of the said railways many of the provisions of the said Act, and to accomplish the main purpose of the said Act as expressed in the recital thereto, namely—

> to provide for the incorporation of a Company under which the railways, works and undertakings of the Companies comprised in the Canadian Northern System may be consolidated, and together with the Canadian Government Railways operated as a national railway system.

The Minister accordingly recommends that the Canadian Government Railways, which for the purpose of Section 10 of the said Act, shall include the following lines designated specifically—

The Intercolonial Railway,
The National Transcontinental Railway,
The Lake Superior Branch leased from the Grand Trunk Pacific Railway Company,
The Prince Edward Island Railway,
The Hudson Bay Railway.

and as a general designation all other railways and branch lines, the title to which, and to the lands and properties whereon such railways are constructed, is vested in His Majesty, be by Order in Council entrusted in respect of the management and operation thereof to the Company on the terms in the said Act expressly specified, namely, that such management and operation shall continue during the pleasure of the Governor in Council and shall be subject to termination or variation from time to time in whole or in part by the Governor in Council.

The Minister also recommends that the full benefit of all powers, rights, privileges and interests vested in His Majesty under any agreement for joint operation or running rights with any other corporation in connection with the operation with any of the said Canadian Government Railways, be also entrusted in respect of such operation and management to the Company on the same terms as hereinbefore set forth.

That the Order in Council of November 20th, 1918, above referred to, be cancelled.

The Committee concur in the foregoing recommendations and submit the same for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

The WITNESS: Then I was asked—unfortunately I do not know who asked me—but it was a question regarding the reserves for depreciation.

Hon. Mr. MARLER: I think it was Mr. Hamilton.

The WITNESS: Either Mr. Hamilton or the gentleman who sat at the end opposite Mr. Fulton.

The CHAIRMAN: Mr. Nesbitt.

The WITNESS: In any event he was referring to an item in the railway balance sheet of December 31, 1954, entitled "Accrued depreciation $230,188,287" which is found on page three in the light green pages in our 1954 annual report and the question asked was whether or not there existed a cash reserve for that account.

The answer is that we have no funded reserve, that the amount of $230 million odd represents the accumulation of annual reserves and our annual reserves are reinvested in the business of the railway as authorized annually by the Canadian National Railways Finance and Guarantee Act.

Then, Mr. Green, asked yesterday for a tabulation of the lines of railway of the Canadian government railways and their respective mileages. I have particulars of them in a form and I do not know whether this form is really the form in which Mr. Green wishes them to be or not but it might be all that is required.

The list is:

National Trans-Continental Railway	2038·53 miles
Newfoundland Railway	774·76 miles
Hudson Bay Railway	777·8 miles
Temiscouata Railway	106·96 miles
Lake Superior Branch	185·41 miles
Intercolonial, Prince Edward Island and other maritime lines	3669·18 miles
Total	7352·46 miles

I should point out that this is the aggregate of track miles representing first track mileage to which is added second track mileage where it exists or tracks and spurs and to give you a basis of comparison the corresponding figure for the entire system is 33,668·46 miles and the breakdown of that figure will be found on page 14 of the green sheets in the annual report.

Now, if you desire I can break it further but I hope that is sufficient for you.

By Mr. Green:

Q. That is sufficient.—A. Then again this morning—and unfortunately we have not had sufficient time to make a comprehensive answer to your question —you asked for a list of shipping operations that had been entrusted. We have ascertained but three, they being the Newfoundland Shipping Services, The Prince Edward Island Ferry Service and the Yarmouth-Bar Harbour service which is not in operation and I would like to say that I shall go on with the examination of this and if there are any more then we will make a supplementary return.

Q. You were going to let us know about the actual measures taken by the railways to further the use of Canadian ports?—A. Yes, unfortunately I have not had time to do that and it will have to be filed later.

Q. We can get that later, can we?

Hon. Mr. MARLER: I think so. I don't see any particular reason why not. I take it we might have a letter from Mr. MacMillan to the clerk of the committee, to be printed as an appendix.

Agreed.

The CHAIRMAN: Agreed. Shall the preamble carry?
Carried.

Does the interpretation clause carry?
Carried.

Shall the title carry?
Carried.

Shall the bill carry as amended?
Carried.

Shall I report the bill with amendments?
Agreed.

Mr. MACNAUGHT: Before we adjourn I would like to ask that the committee go on record as expressing its deep appreciation to Mr. MacMillan, vice-president and general manager, Mr. Cote, Mr. Taschereau and Mr. Macdougall and others for the assistance they have given us today.

The CHAIRMAN: Also the reporters who have worked hard taking it.

Hon. Mr. MARLER: Mr. Chairman, I would also like to thank the committee for having received me so cordially at times, even when it came to the more difficult clauses.

Mr. JOHNSTON (*Bow River*): You were very agreeable too.

The CHAIRMAN: The committee is adjourned until the call of the chair.

APPENDIX

CANADIAN NATIONAL RAILWAYS
LAW DEPARTMENT

MONTREAL 1, June 7, 1955.

Mr. Eric H. Jones
Clerk of the Committee,
Committees Branch,
House of Commons,
OTTAWA, Canada.

Dear Mr. Jones:

In the course of the meetings last week of the Standing Committee on Railways, Canals and Telegraph Lines, dealing with Bill 351, Mr. Green and Mr. Nowlan asked for a statement as to what has been done to implement the statutory direction contained in subsection (2) of section 14 of the Canadian National-Canadian Pacific Act respecting the routing of export traffic through Canadian seaports.

Even before the enactment of that legislation, Canadian National always pursued the policy of endeavouring to influence export shippers to make use of Canadian ports whenever possible. The most active organization to promote export through Canadian seaports is the Canadian Port Committee, of which Canadian National is an active member, along with Canadian Pacific, National Harbours Board, Canadian Exporters Association, Canadian Manufacturers Association, Canadian Importers and Traders Association, Maritime Transportation Commission, Canadian Maritime Commission, Shipping Federation of Canada, Canada Steamship Lines, the Department of Trade and Commerce, and others. This committee meets frequently and its sole purpose is to attempt to influence Canadian industry to ship through Canadian seaports.

Under existing export trade practices, there is no traffic that has not already been routed when it reaches the Railway, as when such traffic is delivered to the Railway, the identity of the port and of the ship where the goods are to be loaded for the sea voyage has already been determined, the shipper having had to pre-arrange for the booking of ship space. Therefore, the only method which Canadian National can use to influence the movement of export traffic through Canadian ports is to provide attractive rates for the carriage of goods to such ports and adequate advance solicitation.

To encourage routing through Canadian ports, Canadian National maintains its export rates through Canadian Atlantic ports on a parity with United States Atlantic ports, although the mileage to our Atlantic ports is considerably greater than that of the United States Atlantic ports. Our activities in soliciting traffic are not limited to Canada, as we also maintain soliciting forces in the United States, which endeavour to obtain routing from shippers through Canadian Atlantic and St. Lawrence ports whenever ocean bookings are available. Our efforts in that line have been successful, as we have obtained a substantial tonnage from the Midwest United States for export through Canadian ports.

Yours very truly,

(sgd) N. J. MACMILLAN,
Vice-President and General Counsel